

*caption indicated on
use original bill.
J.S.*

2-4-81

By Traeger

S.B. No. 915

Substitute the following for S.B. No. 915:

By

Mengden

C.S.S.B. No. 915

A BILL TO BE ENTITLED

AN ACT

relating to continuation of the functions of the Texas Water Well Drillers Board and regulation of water well drillers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Water Well Drillers Act, as amended (Article 7621e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. SHORT TITLE. This Act shall be known and may be cited as "The Water Well Drillers Act."

Sec. 2. DEFINITIONS. The following words and phrases as used in this Act shall have the following meanings unless a different meaning clearly appears from the context. The singular form shall also mean plural form and the masculine gender shall also include the feminine and neuter genders.

(a) "Person" shall mean any individual, whether or not connected with a firm, partnership, association, corporation, or any other group or combination acting as a unit.

~~[(b)--"Commission"--shall-mean-the-Texas-Water--Commission--or
its-successor-]~~

(b) [(e)] "Board" shall mean the Texas Water Well Drillers Board.

(c) "Executive director" shall mean the executive director
of the Texas Department of Water Resources.

(d) "Department" shall mean the Texas Department of Water

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providing enforcement procedures
and civil penalties;

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respective powers, duties, and responsibilities
of the board, and the ^{the licensee,} Department of Water
Resources, amending the Water Well Drillers
Act, as amended (Article 7621e, Vernon's
BY Fitzgerald Texas Civil Statutes).
S.B. No. 915

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connected with a firm, partnership, association, corporation, or
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~~[(b)--"Commission"--shall--mean--the--Texas--Water--Commission--or
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(b) ~~[(e)]~~ "Board" shall mean the Texas Water Well Drillers
Board.

(c) "Executive director" shall mean the executive director
of the Texas Department of Water Resources.

(d) "Department" shall mean the Texas Department of Water

1 Resources.

2 (e) [(d)] "Water well" shall mean any artificial excavation
3 constructed for the purpose of producing ground water. The term,
4 however, shall not include any test or blast holes in quarries or
5 mines, or any well or excavation for the purpose of exploring for,
6 or producing oil, gas, or any other minerals unless the holes are
7 used to produce ground water.

8 (f) [(e)] "Water well driller" shall mean any person
9 (including owner, operator, and drilling supervisor) who engages
10 for compensation in the drilling, boring, coring, or construction
11 of any water well in this State. The term, however, shall not
12 include any person who drills, bores, cores, or constructs a water
13 well on his own property for his own use or a person who assists in
14 the construction of a water well under the direct supervision of a
15 licensed [~~registered~~] water well driller and is not primarily
16 responsible for the drilling operations.

17 (g) [(f)] "Licensed [~~Registered~~] water well driller" shall
18 mean any person who holds a license [~~certificate~~] issued by the
19 State of Texas pursuant to the provisions of this Act.

20 (h) [(g)] "Pollution" shall mean the changing of the
21 physical, thermal, chemical, or biological quality of, or the
22 contamination of, any water in a way that makes the water harmful
23 to humans, animal life, vegetation, or property or to the public
24 health, safety, or welfare or that impairs the usefulness or the
25 public enjoyment of the water for any lawful or reasonable purpose
26 [~~an-impairment-of-the-physical,-chemical,-or-biological--properties~~
27 ~~of--water-by-the-acts-or-instrumentalities-of-man-to-a-degree-which~~

1 ~~results-in-a-material-and-adverse-effect-upon--the--quality--as--to~~
2 ~~destroy-possible-consumptive-or-beneficial-use-of-such-waters~~].

3 (i) [(h)] "Well log" shall mean a log accurately kept, at
4 the time of drilling, showing the depth, thickness, character of
5 the different strata penetrated, location of water-bearing strata,
6 depth, size and character of casing installed, together with any
7 other data or information required by the Board, on forms
8 prescribed by the Board.

9 (j) [(i)] "Water Well Drillers Board" shall mean an
10 examining board consisting of nine (9) members, all [~~three-of-whom~~
11 ~~shall-be-ex-officio-nonvoting-members-and-six~~] of whom shall be
12 voting members appointed by the Governor with the advice and
13 consent of the Senate as hereinafter provided.

14 (k) [(j)] "License [~~Registration~~] fee" shall mean the
15 initial fee to be paid by a driller under this Act [~~which-shall-be,~~
16 ~~unless-otherwise-provided-herein,-\$25.00~~].

17 (l) [(k)] "Renewal fee" shall mean that fee paid by a
18 previously licensed [~~registered~~] driller [~~which-shall-be-\$25.00-per~~
19 ~~annum~~].

20 (m) [(l)] "Examination fee" shall mean that [~~\$10.00~~]
21 non-refundable fee required of each applicant for each examination.

22 (n) "Executive secretary" shall mean the executive secretary
23 of the Board.

24 Sec. 3. LICENSE (REGISTRATION) REQUIRED (a) It shall be
25 unlawful for any person to act as or to offer to perform services
26 as a water well driller without first obtaining a license
27 [~~certificate-of-registration~~] in the manner prescribed herein and

1 pursuant to the rules of the Water Well Drillers Board.

2 (b) Applications shall contain the name of the applicant,
3 his business address, his permanent mailing address, and such other
4 relevant information as the Board may require.

5 (c) At the time of making application, each applicant shall
6 pay to the executive secretary [~~Commission~~] the required
7 examination fee which shall be non-refundable; and the successful
8 candidates upon notification of eligibility shall pay to the
9 executive secretary [~~Commission~~] the license [~~registration~~] fee.

10 (d) All licenses [~~certificates-of-registration~~] issued under
11 this Act shall expire on August 31 of each year; and on or before
12 that day, each person holding a license [~~certificate--of~~
13 ~~registration~~] shall pay to the executive secretary [~~Commission--the~~
14 ~~sum--of--\$25.00--as~~] an annual renewal fee. [~~Provided-further,~~
15 ~~however,--any-driller-who-allows-his-license-to-lapse-shall-be-given~~
16 ~~a-one-year-grace-period-in-which-to-renew-his-certificate-by-paying~~
17 ~~the-accrued-renewal-fee,--without-the-need-of--taking--the--drillers~~
18 ~~examination.~~] A person may renew his unexpired license by paying
19 to the executive secretary before the expiration date of the
20 license the required renewal fee. If a person's license has been
21 expired for 90 days or less, the person may renew the license by
22 paying to the executive secretary the required renewal fee and a
23 fee that is one-half of the examination fee for the license. If a
24 person's license has been expired for more than 90 days but less
25 than two years, the person may renew the license by paying to the
26 executive secretary all unpaid renewal fees and a fee that is equal
27 to the examination fee for the license. If a person's license has

1 been expired for two years or more, the person may not renew the
2 license. The person may obtain a new license by submitting to
3 reexamination and complying with the requirements and procedures
4 for obtaining an original license.

5 (e) The executive secretary shall maintain a current
6 register of licensees.

7 (f) [(e)] A license [certificate-of-registration] shall not
8 be transferable or assignable.

9 (g) [(f)] A duplicate license [certificate-of-registration]
10 to replace a lost or destroyed license [certificate] shall be
11 issued by the executive secretary [Commission] upon proper
12 application and payment of a [\$1.00] fee.

13 [(g)--Any-water-well-driller-in-this-State-on--the--effective
14 date-of-this-Act-shall-be-entitled-to-a-certificate-of-registration
15 upon--the--filing--of-an-application-no-later-than-August-31,-1966,
16 and-the-payment-of-a-\$25.00-registration-or-renewal-fee.]

17 (h) The Board shall establish reasonable and necessary fees
18 for the administration of this Act.

19 (i) [(h)] Each applicant shall have been a resident of the
20 State of Texas for not less than 90 days prior to making
21 application for a license [registration] as a water well driller.

22 Sec. 3A. LICENSES. The board by rule may adopt a system
23 under which licenses [certificates--of--registration] expire on
24 various dates during the year. For the year in which the license
25 [certification] expiration date is changed, license [certificate]
26 renewal fees payable on August 31 shall be prorated on a monthly
27 basis so that each license [certificate] holder shall pay only that

1 portion of the license [~~certification~~] renewal fee which is
2 allocable to the number of months during which the license
3 [~~certification~~] is valid. On renewal of the license
4 [~~certification~~] on the new expiration date, the total license
5 [~~certification~~] renewal fee is payable.

6 Sec. 4. ENDORSEMENT (RECIPROCITY)[✓] The Board may develop
7 rules specifying grounds by which the executive secretary may waive
8 any license requirement for an applicant with a valid license from
9 another state having license requirements substantially equivalent
10 to those of this state [~~The-Commission,-upon-application--therefor~~
11 ~~and--upon--the--payment-of-the-proper-registration-fee,-may-issue-a~~
12 ~~certificate-of-registration-as-a-registered-water-well--driller--to~~
13 ~~any-person-who-holds-a-certificate-of-qualification-or-registration~~
14 ~~issued--to--him--by--proper--authority-in-any-state-or-territory-or~~
15 ~~possession-of-the-United-States,-or-of-any-other--country,-if--the~~
16 ~~registration-standard-under-which-said-certificate-was-issued-is-of~~
17 ~~a--standard-not-lower-than-that-specified-by-the-provisions-of-this~~
18 ~~Act,-and-the-rules-of-the-Water--Well--Drillers--Board--promulgated~~
19 ~~pursuant--to--the--provisions-hereof,-and-if-that-particular-state,~~
20 ~~territory,-or-possession-of-the-United-States,-or--country--extends~~
21 ~~similar--privileges--to-the-persons-registered-under-the-provisions~~
22 ~~of-this-Act,-provided,-however,-that-before-such-applicant--may--be~~
23 ~~registered,-he-must-show-compliance-with-the-residency-requirements~~
24 ~~of--Section--3,-subsection--(h)--hereof--The-Board-shall-keep-the~~
25 ~~Commission-informed-of-what-states,-territories,-possessions,-and~~
26 ~~countries-fulfill-these-reciprocal-requirements].~~

27 Sec. 5. (REPORTING OF WELL LOGS)[✓] Every licensed [~~registered~~]

1 water well driller drilling, deepening or otherwise altering a
2 water well within this State shall make and keep, or cause to be
3 made and kept, a legible and accurate well log, and within thirty
4 (30) [~~sixty--(60)~~] days from the completion or cessation of
5 drilling, deepening or otherwise altering such a water well, shall
6 deliver or transmit by certified mail a copy of such well log to
7 the executive director [Commission], and the owner thereof or the
8 person having had such well drilled. The well log required herein
9 shall at the request in writing to the executive director
10 [Commission], by certified mail, by the owner or the person having
11 such well drilled be held as confidential matter and not made of
12 public record.

13 Sec. 6. WATER WELL DRILLERS BOARD (a) The Water Well
14 Drillers Board shall be composed of nine (9) members appointed by
15 the governor. [~~7--three-ex-officio-and-six-appointed-as-follows,--to~~
16 ~~wit--~~

17 [~~(a)--One--(1)--member--of--the--Board--shall--be--the--chairman--of~~
18 ~~the--Texas--Water--Commission--or--a--representative--from--his--staff~~
19 ~~appointed--by--him--who--shall--be--a--nonvoting--member--and--shall--serve--in~~
20 ~~an--advisory--capacity--only.--In--the--event--that--the--functions--of--the~~
21 ~~Texas--Water--Commission--are--transferred--to--the--Texas--Water~~
22 ~~Development--Board,--then--the--member--appointed--hereby--shall--be--the~~
23 ~~Executive--Director--of--the--Texas--Water--Development--Board--or--a~~
24 ~~representative--from--his--staff--appointed--by--him.~~

25 [(b)--One--(1)--member--shall--be--the--Executive--Secretary--of--the
26 State--Water--Pollution--Control--Board--or--a--representative--from--his
27 staff--appointed--by--him--and--shall--also--be--a--nonvoting--member--and

1 shall-serve-in-advisory-capacity-only-

2 [(e) -- One (1) member shall be the chairman of the State Board
3 of Health or a representative from his staff appointed by him and
4 shall also be a nonvoting member and shall serve in an advisory
5 capacity only.]

6 (b) [(d)] Six (6) members shall be water well drillers who
7 have [appointed by the Governor with the advice and consent of the
8 Senate, under] the following qualifications [conditions, -- to -- wit]:

9 (1) Each such driller shall be a citizen of the State of
10 Texas.

11 (2) Each such driller shall have [a minimum of ten years]
12 experience in the water well drilling business prior to his
13 appointment.

14 (3) Each such driller shall be conversant in water well
15 drilling, completion and plugging methods and techniques.

16 (4) Each such driller shall be a licensed [registered] water
17 well driller.

18 (5) One driller shall be selected from the State at large
19 and one of each such drillers shall be selected from the following
20 geographic areas of the State of Texas:

21 A. Gulf Coast Area.

22 B. Trans-Pecos Area.

23 C. Central Texas Area.

24 D. North-East Texas Area.

25 E. Panhandle-South Plains Area.

26 (6) [(e)] It is further provided that no more than one (1)
27 driller [Board] member may be employed by or own an interest in the

1 same company, firm or business association which is engaged in any
2 phase of the water well drilling business.

3 [~~(f)~~--The--first-six-(6)--Board-members-shall-be-appointed-for
4 the-following-terms---two-(2)--for-two-(2)-years;-two-(2)--for--four
5 (4)-years;-and-two-(2)-for-six-(6)-years-]

6 (c) Three members must be representatives of the general
7 public. A person is not eligible for appointment as a public
8 member if the person or the person's spouse:

9 (1) is licensed by an occupational regulatory agency in the
10 field of water well drilling; or

11 (2) is employed by, participates in the management of, or
12 has, other than as a consumer, a financial interest in, a business
13 entity or other organization related to the field of water well
14 drilling.

15 (d) [~~(g)~~] All terms shall expire on September 15 and all
16 regular appointments shall be for terms of six (6) years.

17 [~~(h)~~--The-initial-appointments-of-the-six-(6)--members--shall
18 be-made-immediately-following-the-effective-date-of-this-Act-

19 [~~(i)~~--The--six--(6)--appointed--Board--members--shall-receive
20 compensation-and-travel-allowance-as-the-Legislature-may-provide-in
21 the-General-Appropriation-Act-]

22 (e) Each member of the Board is entitled to a per diem as
23 set by legislative appropriation for each day that the member
24 engages in the business of the Board.

25 (f) [~~(j)~~] The Board shall hold meetings [a--regular--annual
26 meeting;-it-may-hold-special-meetings] at the call of the chairman
27 or the executive secretary [at-the-request-of-three-Board-members].

1 (g) [~~k~~] A majority of the Board is a quorum for conducting
2 business.

3 (h) [~~l~~] The Board shall elect a chairman [~~7--who--shall--be~~
4 ~~presiding--officer,--and--who--shall--not--vote--except--when--there--shall~~
5 ~~be--a--tie--vote,~~] by a majority vote at the first regular meeting
6 each year.

7 (i) [~~m~~] The Board shall prepare [~~and-grade~~] examinations
8 and pass upon qualifications of applicants for licenses and cause
9 to be issued licenses to those who qualify.

10 (j) [~~n~~] The Board shall design written examinations in
11 such a manner as to disqualify any person lacking in the necessary
12 knowledge of drilling, completion and plugging methods and
13 techniques and of ground water formations to the extent that the
14 performance by such person of services as a water well driller
15 would create a serious risk of polluting fresh water. Provided,
16 however, that each applicant shall have the right to have such
17 examination given him orally, in lieu of in writing.

18 [~~(e)--A-person-who-passes-the-examination-given-by-the--Board~~
19 ~~is-entitled-to-be-licensed-under-this-Act-~~]

20 (k) [~~p~~] Administration of examination:

21 (1) The executive secretary [~~Commission~~] shall offer
22 examinations prepared by the Board at least once a year and more
23 frequently if more than 10 persons petition the Board [~~Commission~~]
24 for an additional examination, or the Board should so provide.

25 (2) The examination shall be so administered so that the one
26 who grades an examination does not know whose paper he is grading.

27 (3) The executive secretary [~~Commission~~] shall maintain

1 files of examination papers. A person, at any time within six
2 months of the date that he is notified of the results of an
3 examination, is entitled to inspect his examination paper during
4 normal business hours at the executive secretary's [Commission's]
5 office for the purpose of challenging the propriety of the
6 questions, the method of grading, and the accuracy of grading.

7 [~~4~~]~~--All--successful--applicants--who--pass--the--examination--may~~
8 ~~pay--the--\$25.00--registration--fee--to--the--Commission--and--obtain--a~~
9 ~~drillers--registration--certificate--]~~

10 (1) [~~4~~] The person who fails an examination may apply for
11 a subsequent examination, but must pay the application fee each
12 time he applies. [~~He--may--not--however--be--counted--among--the--ten~~
13 ~~(10)--applicants--necessary---to---petition---for---an---additional~~
14 ~~examination--]~~

15 Sec. 6a. APPLICATION OF SUNSET ACT. The Texas Water Well
16 Drillers Board is subject to the Texas Sunset Act, as [✓]amended
17 (Article [✓]5429k, Vernon's [✓]Texas Civil Statutes). Unless~~[--and~~
18 ~~unless]~~ continued in existence as provided by that Act, the board
19 is abolished, and this Act expires effective September 1, 1993
20 [~~1981~~].

21 Sec. 7. (RULES AND REGULATIONS[✓]) (a) The Board shall adopt,
22 prescribe, promulgate, and enforce all rules and regulations
23 reasonably necessary to effectuate the provisions of this Act,
24 including all rules governing applications for a license
25 [~~registration--certificates~~], qualifications of applicants, marking
26 of water well drilling rigs and equipment, standards of conduct for
27 licensed [~~registered~~] water well drillers and all rules governing

1 procedure and practice before the Board. Be it further provided,
2 however, that before the Board may adopt any substantive rule under
3 this Act, it must mail a copy of the proposed rule or amendment
4 together with an informative summary of the rule or amendment to
5 each person licensed under this Act, at least twenty (20) days
6 prior to the proposed effective date of such a proposed rule. The
7 procedural rules adopted by the Board shall be filed with the
8 Secretary of State and shall become effective thirty (30) days
9 thereafter.

10 (b) Full authority is given the Board to enforce by
11 injunction or other appropriate remedy, in courts of competent
12 jurisdiction, any and all reasonable rules, regulations, decisions,
13 determinations and orders promulgated by it which do not conflict
14 with any law. It shall be the duty of the Attorney General to
15 represent the Board when requested to do so.

16 (c) All rules and regulations proposed to be adopted and
17 promulgated by the Board shall be approved in writing by the
18 Attorney General and placed on file in the office of the Secretary
19 of State for public inspection for at least thirty (30) days prior
20 to their effective date. Any changes, alterations or revocations
21 of such rules and regulations shall be likewise approved in writing
22 by the Attorney General and which changes, alterations or
23 revocations shall be filed in the office of Secretary of State
24 prior to their effective date.

25 Sec. 8. REVOCATION OF LICENSES [~~CERTIFICATES-----OF~~

26 REGISTRATION]~~X~~ (a) The license [~~certificate-of-registration~~] of
27 any [~~registered~~] water well driller who violates any provision of

1 this Act or any substantive rule or regulation of the Board
2 promulgated under the authority of this Act may be revoked or
3 suspended by the Board. Grounds for revocation or suspension of a
4 driller's license [~~certificate~~] shall include intentional
5 misstatement or misrepresentation of fact on an application or well
6 log; failure to keep and transmit water well logs as provided
7 herein; failure to advise a person for whom a well is being drilled
8 that injurious water has been encountered, is a pollution hazard,
9 and must be forthwith plugged in an acceptable manner; or being
10 found to be an incompetent water well driller.

11 (b) The Board shall, before suspending or revoking any
12 license [~~certificate-of-registration~~], notify the holder in writing
13 of any changes made in order to afford such holder an opportunity
14 to be heard, which notification shall be given at least ten (10)
15 days prior to the date set for hearing, and which shall prescribe
16 the time and place of the hearing. Such written notice may be
17 served by mailing same by registered mail to the last known
18 business address of such person. At such hearing such person and
19 all persons complaining against him, as well as any other witness
20 whose testimony is relied upon to substantiate the charges made,
21 shall be entitled to be present. He shall also be entitled to
22 present evidence, oral and written as may be relevant to the
23 inquiry. In such hearing all witnesses shall be duly sworn and a
24 record of the proceedings shall be taken. Any party to the
25 proceedings desiring it shall be furnished with a copy of the
26 record upon the payment to the Board of a fee not to exceed fifty
27 cents (50¢) per page.

1 (c) Every decision and order in a revocation or suspension
2 hearing rendered by the Board shall be in writing and shall set
3 forth briefly the findings of fact and Board's conclusions.
4 Parties to the proceedings shall be notified of the decision or
5 order in person or by mail and forwarded a copy of same; such
6 orders or decisions shall be transmitted no later than thirty (30)
7 days of conclusion of the hearing.

8 Sec. 9. [✓]APPEAL OF BOARD ACTION (a) A person affected by
9 any ruling, order, decision, or other act of the Board may appeal
10 by filing a petition in a District Court in the county in which the
11 alleged violation occurred.

12 (b) Petition must be filed within thirty (30) days after the
13 date of the Board's action, or, in case of a ruling, order, or
14 decision, within thirty (30) days after its effective date.

15 (c) Service of citation on the Board must be accomplished
16 within thirty (30) days after the date the petition was filed.
17 Citation may be served on the executive secretary [Executive
18 Director] of the [Water-Development] Board or on any member of the
19 [Water-Well-Drillers] Board.

20 (d) The plaintiff shall pursue his action with reasonable
21 diligence.

22 (e) Any ruling of the Board may be appealed in the same
23 manner as appeals from the justice court to the county court. All
24 administrative or executive action taken prior to the filing of the
25 suit shall continue in force and effect until the rights of the
26 parties thereto shall be determined by the court upon a trial of
27 the matters in controversy.

1 Sec. 10. DUTIES OF THE DEPARTMENT [COMMISSION] (a) The
2 department [Commission] shall furnish the Board with necessary
3 clerical [administrative] services, including space for holding
4 examinations; [preparing--examinations;] printing examinations;
5 printing and mailing licenses; sending notices, before August 1 of
6 each year that license must be renewed; collecting fees and issuing
7 receipts; [keeping-a--current--register--of--licensees;] employing
8 secretarial assistance; replying to routine requests for
9 information; printing forms and information; typing all letters to
10 be reproduced; maintaining records and completed examinations; and
11 keeping records of receipts and disbursements; providing necessary
12 legal services; and providing necessary investigative services, and
13 the department [Commission] shall promulgate procedures and
14 standards for plugging water wells [under-Section-15-of-this--Act].

15 (b) The Board shall have access to information kept by the
16 department [Commission] under this Act.

17 (c) The department [Commission] shall adopt the necessary
18 procedural rules in order to carry out the imposed duties under
19 this Section of this Act.

20 [~~(d)--Full-authority-is-given-the-Commission--to--enforce--by~~
21 ~~injunction--or--other--appropriate--remedy,--in-courts-of-competent~~
22 ~~jurisdiction,--any--and--all--rules,--regulations,--decisions,~~
23 ~~determinations--and--orders-promulgated-by-it-which-do-not-conflict~~
24 ~~with-any-law.~~]

25 Sec. 11. EXECUTIVE SECRETARY. (a) The Board shall employ
26 an executive secretary to serve at the pleasure of the Board.

27 (b) The executive secretary is entitled to receive necessary

1 travel expenses, in the same manner as a member of the Board, and a
2 salary as prescribed by the legislature.

3 (c) The executive secretary shall coordinate any
4 administrative, investigative, or legal services provided to the
5 Board by the department.

6 (d) The executive secretary may initiate field inspections
7 for alleged violations of this Act and consumer complaints.

8 (e) The executive secretary shall prepare information of
9 consumer interest describing the regulatory functions of the Board
10 and describing the procedures by which consumer complaints are
11 filed with and resolved by the Board. The executive secretary
12 shall make information available to the general public and
13 appropriate state agencies. Each well log provided to persons
14 having a well drilled shall contain the name, mailing address, and
15 telephone number of the Board.

16 (f) The executive secretary shall keep an information file
17 about each complaint filed with the Board relating to a licensee.

18 (g) If a written complaint is filed with the executive
19 secretary relating to a licensee, the executive secretary, at least
20 as frequently as quarterly, shall notify the parties to the
21 complaint of the status of the complaint until final disposition
22 unless the notification would jeopardize an undercover
23 investigation.

24 [Sec. 11. -- EXCEPTION -- OF -- DROUGHT -- DISASTER -- AREAS -- Upon
25 petition of the commissioners court of any county the Governor may
26 proclaim the county a drought disaster area. If the Governor
27 issues the proclamation that the county is a drought disaster area,

1 the-terms-and-provisions-of-this-Act-are-suspended-in-such-a-county
2 for-the-length--of--time--specified--in--the--proclamation,--except
3 insofar-as-said-Act-applies-to-the-plugging-of-water-wells.]

4 Sec. 12. DISPOSITION OF REVENUES. All money collected by
5 the executive secretary [Commission] under the provisions of this
6 Act shall be placed in the General Revenue Fund.

7 Sec. 13. PENAL PROVISIONS. Any person who fails to comply
8 with the provisions of this Act, or with any rule or regulation
9 promulgated by the board or the department [commission] under this
10 Act, [or-with-any-term,--condition-or-provision-in-his-permit-issued
11 pursuant-to-this-Act,] shall be subject to a civil penalty in any
12 sum not exceeding One Thousand Dollars (\$1,000) for each day of
13 noncompliance and for each act of noncompliance, as the court may
14 deem proper. The action may be brought by the board [or-the
15 commission,--as-appropriate,] in any court of competent jurisdiction
16 in the county where the offending activity is occurring or where
17 the defendant resides. Full authority is also given the executive
18 director [board-or--commission], as appropriate, to enforce by
19 injunction, mandatory injunction or other appropriate remedy, in
20 courts having jurisdiction in the county where the offending
21 activity is occurring, [any--and--all--reasonable--rules--and
22 regulations-promulgated-by-it-which-do-not-conflict-with--any--law,
23 and--all--of-the-terms,--conditions-and-provisions-of-permits-issued
24 by-the-board-or-commission] pursuant to the provisions of this Act.
25 At the request of the board [or--the--commission], the Attorney
26 General shall institute and conduct a suit in the name of the State
27 of Texas for injunctive relief or to recover the civil penalty, or

1 for both the injunctive relief and civil penalty, authorized in
2 this section. Any party to a suit may appeal from a final judgment
3 as in other civil cases. The obtaining of a license [~~permit~~] under
4 the provisions of this Act by a person shall not act to relieve
5 that person from liability under any statutory law or the Common
6 Law.

7 Sec. 14. MARKING RIGS WITH IDENTIFICATION NUMBER. It is the
8 duty of all licensed [~~registered~~] water well drillers to see that
9 all rigs used by them or their employees in the water well drilling
10 business are marked with legible identification numbers at all
11 times; the "identification number" to be used on the rigs shall be
12 the "license number" which appears on the driller's license
13 [~~registration--certificate~~]; the Board shall set out in detail in
14 its rules the specific method and manner for marking the rigs.
15 [~~The--driller--shall--furnish--a--sworn--statement--that--he--has--complied~~
16 ~~with--this--provision--of--the--Act--with--his--annual--renewal--fee--each~~
17 ~~year--~~] Any licensed driller has thirty (30) [~~one-hundred-eighty~~
18 ~~(180)~~] days to comply with the regulations provided in this section
19 [~~Section-14~~].

20 Sec. 15. (✓) PLUGGING OF WELLS (a) It shall be the duty of
21 each driller licensed [~~registered~~] under this Act to inform
22 forthwith the landowner or person having a well drilled when water
23 [~~is~~] injurious to vegetation, to land or to fresh water has been
24 encountered and such well must be plugged or properly completed in
25 order to avoid injury or pollution.

26 (b) It shall be the duty of the landowner or person having a
27 well drilled, upon being so informed, to see that such a well is

1 forthwith plugged or completed under standards and procedures
2 promulgated [set] by the department [Texas-Water-Commission].

3 (c) It shall be the duty of whoever shall plug such a well
4 to complete a plugging report within thirty (30) days and submit it
5 to the executive director [Commission]; appropriate forms shall be
6 furnished by the executive director [Commission] upon request.

7 Sec. 16 [17]. (CONSTRUCTION) Nothing in this Act shall be
8 construed as affecting the ownership, or the rights of owners of
9 the land, in underground water.

10 Sec. 17 [18]. (SEVERABILITY CLAUSE) If any provision of this
11 Act or the application thereof to any person or circumstance is
12 held invalid, such invalidity shall not affect other provisions or
13 applications of the Act which can be given effect without defeating
14 the purpose or objective of the provision, and to this end, the
15 provisions of this Act are declared to be severable.

16 Sec. 18 [20]. (TRANSFER OF FUNCTIONS) In the event that the
17 functions of the Texas Department of Water Resources [Water
18 Commission] necessary to the proper implementation of its duties
19 under this Act are transferred to [the-Texas-Water-Development
20 Board-or] any other agency, the authority given herein to the Texas
21 Department of Water Resources [Water---Commission] shall be
22 transferred to [the--Texas-Water-Development-Board-or] such other
23 agency.

24 SECTION 2. Each valid certificate of registration issued by
25 the board on or before September 1, 1981, continues in effect until
26 its regular expiration date.

27 SECTION 3. (a) Except for the ex officio members, incumbent

1 members of the board on the effective date of this Act serve the
2 remainder of their terms.

3 (b) The governor shall appoint one public member for a term
4 expiring on September 15, 1983, one public member for a term
5 expiring on September 15, 1985, and one public member for a term
6 expiring on September 15, 1987.

7 SECTION 4. This Act takes effect September 1, 1981.

8 SECTION 5. The importance of this legislation and the
9 crowded condition of the calendars in both houses create an
10 emergency and an imperative public necessity that the
11 constitutional rule requiring bills to be read on three several
12 days in each house be suspended, and this rule is hereby suspended.

COMMITTEE SUBSTITUTE FORM

Austin, Texas

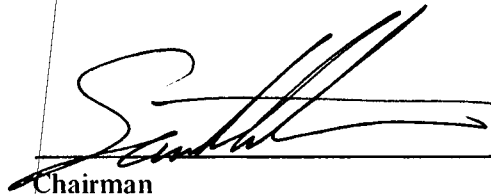
4/2/81

Date of report to Senate

Honorable William P. Hobby
President of the Senate

Sir:

We, your Committee on Natural Resources, to which was referred
S B. No. 915, have had the same under consideration, and I am instructed to report it back to the
Senate with the recommendation that it do not pass, but that the Committee Substitute adopted in lieu
thereof do pass and be printed.


Chairman

Paper clip TWO copies of the Committee Substitute and TWO copies of this form to the original bill and retain one copy of this form for your file.

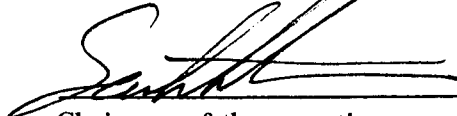
LOCAL

**REQUEST FOR LOCAL & UNCONTESTED CALENDAR
PLACEMENT**

Hon. Roy Blake, Chairman
Administration Committee

Sir:

Pursuant to S.R. 148, notice is hereby given that SB 915, by: TRaeger,
was heard by the Committee on Natural Resources on 4/1, 1981
and reported out with the recommendation that it be placed on the Local and Uncontested
Calendar.


Chairman of the reporting committee

IMPORTANT: THIS FORM MUST BE ATTACHED TO A PRINTED COPY OF THE BILL
OR RESOLUTION, WHICH ALONG WITH 7 ADDITIONAL COPIES OF THE BILL OR
RESOLUTION SHOULD BE DELIVERED TO THE OFFICE OF THE COMMITTEE ON
ADMINISTRATION, ROOM G-27J. PLEASE CALL 5-1134 IF YOU HAVE ANY
QUESTIONS. **DEADLINE FOR SUBMITTING BILLS FOR THE LOCAL CALENDAR IS**
5:00 P.M. MONDAYS.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 1, 1981

Honorable H. Tati Santiesteban, Chairman
Committee on Natural Resources
Senate Chamber
Austin, Texas

In Re: Senate Bill No. 915
By: Traeger

Sir:

In response to your request pursuant to Senate Rule 94, Subsection (g), this office finds the fiscal implications of Senate Bill No. 915 (relating to continuation of the functions of the Texas Water Well Drillers Board and regulation of water well drillers) to be as follows:

The bill would make no appropriation but could provide the legal basis for a request for funds to implement the provisions of the bill.

The Texas Water Well Drillers Board is subject to the provisions of the Texas Sunset Act, and unless continued in existence by the Legislature, will be abolished effective September 1, 1981.

The bill, should it be enacted, would continue the existence of the Texas Water Well Drillers Board, increase the number of board members from six to nine, and require the Board to hire its own executive secretary.

The bill would also give board members the authority to set fees related to water well drillers at a level sufficient to cover the cost of their regulation.

The amount set forth for this agency in the General Appropriations Bill, as introduced (FY 1982 \$9,000; FY 1983 \$9,000), would be contingent, if approved, upon passage of Senate Bill No. 915 or similar legislation. The appropriations would be financed from the General Revenue Fund and are only for travel and per diem of board members.

Currently all administrative services to the Board are provided by the Department of Water Resources and paid from the General Revenue Fund appropriations to the Department. In fiscal year 1980 the cost to the Department of providing these services was approximately \$80,000, and amounts adequate to continue this support are included in the General Appropriations Bill for fiscal years 1982 and 1983.


In addition to the recommended appropriations, the probable fiscal implication of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

<u>Fiscal Year</u>	<u>Probable Cost Out Of The General Revenue Fund</u>	<u>Change In Number Of State Employees From FY 1981</u>
1982	\$ 31,760	+ 1
1983	33,885	+ 1
1984	33,885	+ 1
1985	33,885	+ 1
1986	33,885	+ 1

Fiscal Note for Senate Bill No. 915
April 1, 1981
Page Two

The financial implications of the bill in future years may reasonably be expected to approximate the recommended appropriation amounts, plus the additional costs as shown above, but would in fact depend upon future decisions of the Texas Legislature.

No fiscal implication or additional cost to units of local government attributable to the bill, should it be enacted, is anticipated.


Thomas M. Keel
Director

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 8, 1981

Honorable H. Tati Santiesteban, Chairman
Committee on Natural Resources
Senate Chamber
Austin, Texas

In Re: Committee Substitute for
Senate Bill No. 915

Sir:

In response to your request pursuant to Senate Rule 94, Subsection (g), this office finds the fiscal implications of the Committee Substitute for Senate Bill No. 915 (relating to continuation of the functions of the Texas Water Well Drillers Board and regulation of water well drillers) to be as follows:

The bill would make no appropriation but could provide the legal basis for a request for funds to implement the provisions of the bill.

The Texas Water Well Drillers Board is subject to the provisions of the Texas Sunset Act, and unless continued in existence by the Legislature, will be abolished effective September 1, 1981.

The bill, should it be enacted, would continue the existence of the Texas Water Well Drillers Board and increase the number of board members from six to nine.

The bill would also give board members the authority to set fees related to water well drillers at a level sufficient to cover the cost of their regulation.

The amount set forth for this agency in the General Appropriations Bill, as introduced (FY 1982-\$9,000; FY 1983-\$9,000), would be contingent, if approved, upon passage of Senate Bill No. 915 or similar legislation. The appropriations would be financed from the General Revenue Fund and are only for travel and per diem of board members.

Currently, all administrative services to the board are provided by the Department of Water Resources and paid from the General Revenue Fund appropriations to the Department. In fiscal year 1980 the cost to the Department of providing these services was approximately \$80,000, and amounts adequate to continue this support are included in the General Appropriations Bill for fiscal years 1982 and 1983.


In addition to the recommended appropriations, the probable fiscal implication of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

<u>Fiscal</u> <u>Year</u>	<u>Probable Cost</u> <u>Out Of The</u> <u>General Revenue Fund</u>
1982	\$4,500
1983	4,500
1984	4,500
1985	4,500
1986	4,500

Fiscal Note for the Committee Substitute
for Senate Bill No. 915
April 8, 1981
Page Two

The financial implications of the bill in future years may reasonably be expected to approximate the recommended appropriation amounts, plus the additional costs as shown above, but would in fact depend upon future decisions of the Texas Legislature.

No fiscal implication or additional cost to units of local government attributable to the bill, should it be enacted, is anticipated.


Thomas M. Keel
Director

AMENDMENT NO. 1

BY: Doggett

AMEND C.S.S.B. 915 as follows:

(1) On page ⁹4, after line ¹14, by striking the proposed subsection (c) and inserting the following:

"(c) Three members must be representatives of the general public. A person is not eligible for appointment as a public member if the person or the person's spouse:

"(1) is licensed by an occupational regulatory agency in the field of water well drilling;

"(2) is employed by, participates in the management of, or has, other than as a consumer, a financial interest in, a business entity or organization related to the field of water well drilling; or

"(3) owns, controls, or has, directly or indirectly, an interest in a business entity that provides water well drilling services or that sells, manufactures, or distributes water well drilling equipment.

(2) On page ⁹4, after line ¹⁰23, by adding new subsections (d), (e) and (f) as follows, and renumbering all sections accordingly:

"(d) a member of the Board, employee of the Board, or an employee of the department whose duties are related to the administration of this Act, may not be an officer, employee, or paid consultant of a trade association in the water well drilling field. A member of the Board, employee of the Board, or employee of the department whose duties are related to the administration of this Act, may not be related within the second degree by affinity or within the

ADOPTED

APR 29 1981

Betty King
Secretary of the Senate

Also am. #1

second degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not serve as a member of the Board or act as counsel to the Board.

"(e) It is ground for removal from the Board if a member:

"(1) does not have at the time of appointment the qualifications required by Subsection (b)^(c) of this section for appointment to the Board;

"(2) does not maintain during the service on the Board the qualifications required by Subsection ^{(b) or c} (a) of this section for appointment to the Board; or

"(3) violates a prohibition established by Subsection (d) of this section.

"(f) If a ground for removal of a member from the Board exists, the Board's actions during the existence of the ground for removal are not invalid for that reason.

(2) cont.

- (2) On page 4, after line 63, by adding new subdivisions (3) and (4) and renumbering all sections accordingly:

(3) Within 30 days after the day on which a licensing examination is administered under this article, the department shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the department shall notify examinees of the results of the examination within two weeks after the day that the Board receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the department shall notify the examinee of the reason for the delay before the 90th day.

(4) If requested in writing by a person who fails the licensing examination administered under this article, the department shall furnish the person with an analysis of the person's performance on the examination as prescribed by Board rule.

- (3) On page 6, after line 56, by adding a new subsection (d) and (e) as follows:

(d) The department shall keep an information file about each complaint filed with the department relating to a licensee.

(e) If a written complaint is filed with the department relating to a licensee, the department, at least as frequently as quarterly, shall notify the complainant of the status of the complaint until its final disposition unless the notification would jeopardize an undercover investigation. [Strike thru p. 15 l. 21 same P]

12

5

(4) On page 5, after line 30, by adding a new subsection (b) as follows and renumbering all subsections accordingly:

am" (b) The Board may not adopt rules restricting competitive bidding or advertising by a person regulated by the Board except to ¹³/₁₄ prohibit false, misleading, or deceptive practices by the person. The Board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the Board a rule that:

(5) " (1) restricts the person's use of any medium for advertising;

" (2) restricts the person's personal appearance or use of his personal voice in an advertisement;

" (3) relates to the size or duration of an advertisement by the person; or

" (4) restricts the person's advertisement under a trade name.

AMENDMENT NO. 1

BY: Daggett

AMEND C.S.S.B. 915 as follows:

(1) On page 4, after line 14, by striking the proposed subsection (c) and inserting the following:

" (c) Three members must be representatives of the general public.

A person is not eligible for appointment as a public member if the person or the person's spouse:

" (1) is licensed by an occupational regulatory agency in the field of water well drilling;

(2) is employed by, participates in the management of, or has, other than as a consumer, a financial interest in, a business entity or organization related to the field of water well drilling; or

(3) owns, controls, or has, directly or indirectly, an interest in a business entity that provides water well drilling services or that sells, manufactures, or distributes water well drilling equipment.

(2) On page 4, after line 23, by adding new subsections (d), (e) and (f) as follows, and renumbering all sections accordingly: .

" (d) A member of the Board, employee of the Board, or an employee of the department whose duties are related to the administration of this Act, may not be an officer, employee, or paid consultant of a trade association in the water well drilling field. A member of the Board, employee of the Board, or employee of the department whose duties are related to the administration of this Act, may not be related within the second degree by affinity or within the

*No cap
change
MPC
4-29-81*

ADOPTED

APR 29 1981

Betty King
Secretary of the Senate

second degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not serve as a member of the Board or act as counsel to the Board.

(e) It is ground for removal from the Board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (b) of this section for appointment to the Board;

(2) does not maintain during the service on the Board the qualifications required by Subsection (a) of this section for appointment to the Board; or

(3) violates a prohibition established by Subsection (d) of this section.

(f) If a ground for removal of a member from the Board exists, the Board's actions during the existence of the ground for removal are not invalid for that reason.

- (2) On page 4, after line 63, by adding new subdivisions (3) and (4) and renumbering all sections accordingly:

(3) Within 30 days after the day on which a licensing examination is administered under this article, the ~~department~~ shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the ~~department~~ shall notify examinees of the results of the examination within two weeks after the day that the Board receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the ~~department~~ shall notify the examinee of the reason for the delay before the 90th day.

(4) If requested in writing by a person who fails the licensing examination administered under this article, the ~~department~~ shall furnish the person with an analysis of the person's performance on the examination as prescribed by Board rule.

- (3) On page 6, after line 56, by adding a new subsection (d) and (e) as follows:

(d) The ~~department~~ shall keep an information file about each complaint filed with the ~~department~~ relating to a licensee.

(e) If a written complaint is filed with the ~~department~~ relating to a licensee, the ~~department~~, at least as frequently as quarterly, shall notify the complainant of the status of the complaint until its final disposition unless the notification would jeopardize an undercover investigation.

(4) On page 5, after line 30, by adding a new subsection (b) as follows and renumbering all subsections accordingly:

"(b) The Board may not adopt rules restricting competitive bidding or advertising by a person regulated by the Board except to prohibit false, misleading, or deceptive practices by the person. The Board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the Board a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of his personal voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

Amend the cantion to conform to the
body of the bill

ADOPTED

APR 29 1981

Betty King
Secretary of the Senate

By Traeger

S.B. No. 915

Substitute the following for S.B. No. 915:

By

Mengden

C.S.S.B. No. 915

A BILL TO BE ENTITLED

Civil Statutes.

AN ACT

relating to continuation of the functions of the Texas Water Well Drillers Board and regulation of water well drillers; *amending the Water Well Drillers Act, as amended (Article 7621e, Vernon's Texas)*
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Water Well Drillers Act, as amended (Article 7621e, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 1. SHORT TITLE. This Act shall be known and may be cited as 'The Water Well Drillers Act.'"

"Section 2. DEFINITIONS. The following words and phrases as used in this Act shall have the following meanings unless a different meaning clearly appears from the context. The singular form shall also mean plural form and the masculine gender shall also include the feminine and neuter genders.

"(a) 'Person' shall mean any individual, whether or not connected with a firm, partnership, association, corporation, or any other group or combination acting as a unit.

~~"(b) 'Commission' shall mean the Texas Water--Commission--or its successor."~~

"(c) 'Board' shall mean the Texas Water Well Drillers Board.

"(c) 'Executive director' shall mean the executive director of the Texas Department of Water Resources.

"(d) 'Department' shall mean the Texas Department of Water

replaced by House Substitute

4/2/81

1 Resources.

2 " (e) [~~d~~] "Water well" shall mean any artificial excavation
3 constructed for the purpose of exploring for or producing ground
4 water. The term, however, shall not include any test or blast
5 holes in quarries or mines, or any well or excavation for the
6 purpose of exploring for, or producing oil, gas, or any other
7 minerals unless the holes are used to produce ground water.

8 " (f) [~~e~~] "Water well driller" shall mean any person
9 (including owner, operator, and drilling supervisor) who engages
10 for compensation in the drilling, boring, coring, or construction
11 of any water well in this State. The term, however, shall not
12 include any person who drills, bores, cores, or constructs a water
13 well on his own property for his own use or a person who assists in
14 the construction of a water well under the direct supervision of a
15 licensed [~~registered~~] water well driller and is not primarily
16 responsible for the drilling operations.

17 " (g) [~~f~~] "Licensed [~~Registered~~] water well driller" shall
18 mean any person who holds a license [~~certificate~~] issued by the
19 State of Texas pursuant to the provisions of this Act.

20 " (h) [~~g~~] "Pollution" shall mean the changing of the
21 physical, thermal, chemical, or biological quality of, or the
22 contamination of, any water in a way that makes the water harmful
23 to humans, animal life, vegetation, or property or to the public
24 health, safety, or welfare or that impairs the usefulness or the
25 public enjoyment of the water for any lawful or reasonable purpose
26 [an-impairment-of-the-physical,-chemical,-or-biological--properties
27 of--water-by-the-acts-or-instrumentalities-of-man-to-a-degree-which

1 ~~results-in-a-material-and-adverse-effect-upon--the--quality--as--to~~
2 ~~destroy-possible-consumptive-or-beneficial-use-of-such-waters].~~

3 " (i) [(h)] "Well log" shall mean a log accurately kept, at
4 the time of drilling, showing the depth, thickness, character of
5 the different strata penetrated, location of water-bearing strata,
6 depth, size and character of casing installed, together with any
7 other data or information required by the Board, on forms
8 prescribed by the Board.

9 " (j) [(i)] "Water Well Drillers Board" shall mean an
10 examining board consisting of nine (9) members, all [~~three-of-whom~~
11 ~~shall-be-ex-officio-nonvoting-members-and-six~~] of whom shall be
12 voting members appointed by the Governor with the advice and
13 consent of the Senate as hereinafter provided.

14 " (k) [(j)] "License [Registration] fee" shall mean the
15 initial fee to be paid by a driller under this Act [~~which-shall-be,~~
16 ~~unless-otherwise-provided-herein,-\$25.00~~].

17 " (l) [(k)] "Renewal fee" shall mean that fee paid by a
18 previously licensed [~~registered~~] driller [~~which-shall-be-\$25.00-per~~
19 ~~annum~~].

20 " (m) [(l)] "Examination fee" shall mean that [~~\$10.00~~]
21 non-refundable fee required of each applicant for each examination.

22 " Sec¹⁰⁷ 3. LICENSE [REGISTRATION] REQUIRED. (a) It shall be
23 unlawful for any person to act as or to offer to perform services
24 as a water well driller without first obtaining a license
25 [~~certificate-of-registration~~] in the manner prescribed herein and
26 pursuant to the rules of the Water Well Drillers Board.

27 " (b) Applications shall contain the name of the applicant,

1 his business address, his permanent mailing address, and such other
2 relevant information as the Board may require.

3 "(c) At the time of making application, each applicant shall
4 pay to the department [~~Commission~~] the required examination fee
5 which shall be non-refundable; and the successful candidates upon
6 notification of eligibility shall pay to the department
7 [~~Commission~~] the license [~~registration~~] fee.

8 "(d) All licenses [~~certificates-of-registration~~] issued under
9 this Act shall expire on August 31 of each year; and on or before
10 that day, each person holding a license [~~certificate--of~~
11 ~~registration~~] shall pay to the department [~~Commission--the--sum--of~~
12 ~~\$25.00--as~~] an annual renewal fee. [~~Provided-further,-however,-any~~
13 ~~driller-who-allows-his-license-to-lapse-shall-be-given--a--one-year~~
14 ~~grace--period--in--which--to--renew--his--certificate-by-paying-the~~
15 ~~accrued-renewal-fee,--without--the--need--of--taking--the--drillers~~
16 ~~examination-]~~ A person may renew his unexpired license by paying
17 to the department before the expiration date of the license the
18 required renewal fee. If a person's license has been expired for
19 90 days or less, the person may renew the license by paying to the
20 department the required renewal fee and a fee that is one-half of
21 the examination fee for the license. If a person's license has
22 been expired for more than 90 days but less than two years, the
23 person may renew the license by paying to the department all unpaid
24 renewal fees and a fee that is equal to the examination fee for the
25 license. If a person's license has been expired for two years or
26 more, the person may not renew the license. The person may obtain
27 a new license by submitting to reexamination and complying with the

requirements and procedures for obtaining an original license.

" (e) The department shall maintain a current register of licensees.

" (f) [~~e~~] A license [~~certificate-of-registration~~] shall not be transferable or assignable.

" (g) [~~f~~] A duplicate license [~~certificate-of--registration~~] to replace a lost or destroyed license [~~certificate~~] shall be issued by the department [~~Commission~~] upon proper application and payment of a [~~\$1.00~~] fee.

" [~~g~~]--Any--water--well-driller-in-this-State-on-the-effective date-of-this-Act-shall-be-entitled-to-a-certificate-of-registration upon-the-filing-of-an-application-no-later-than--August--31--1966 and-the-payment-of-a-\$25.00-registration-or-renewal-fee.]

" (h) The Board shall establish reasonable and necessary fees for the administration of this Act.

" (i) [~~h~~] Each applicant shall have been a resident of the State of Texas for not less than 90 days prior to making application for a license [~~registration~~] as a water well driller.

" ^{hon} Sect 3A. LICENSES. The board by rule may adopt a system under which licenses [~~certificates--of--registration~~] expire on various dates during the year. For the year in which the license [~~certification~~] expiration date is changed, license [~~certificate~~] renewal fees payable on August 31 shall be prorated on a monthly basis so that each license [~~certificate~~] holder shall pay only that portion of the license [~~certification~~] renewal fee which is allocable to the number of months during which the license [~~certification~~] is valid. On renewal of the license

1 [certification] on the new expiration date, the total license
 2 [certification] renewal fee is payable.

3 "Sec^{10m} 4. ENDORSEMENT [RECIPROCITY]. The Board may develop
 4 rules specifying grounds by which the department may waive any
 5 license requirement for an applicant with a valid license from
 6 another state having license requirements substantially equivalent
 7 to those of this state [The-Commission,-upon-application--therefor
 8 and--upon--the--payment-of-the-proper-registration-fee,-may-issue-a
 9 certificate-of-registration-as-a-registered-water-well--driller--to
 10 any-person-who-holds-a-certificate-of-qualification-or-registration
 11 issued--to--him--by--proper--authority-in-any-state-or-territory-or
 12 possession-of-the-United-States,-or-of-any-other--country,-if--the
 13 registration-standard-under-which-said-certificate-was-issued-is-of
 14 a--standard-not-lower-than-that-specified-by-the-provisions-of-this
 15 Act,-and-the-rules-of-the-Water--Well--Drillers--Board--promulgated
 16 pursuant--to--the--provisions-hereof,-and-if-that-particular-state,
 17 territory,-or-possession-of-the-United-States,-or--country--extends
 18 similar--privileges--to-the-persons-registered-under-the-provisions
 19 of-this-Act,-provided,-however,-that-before-such-applicant--may--be
 20 registered,-he-must-show-compliance-with-the-residency-requirements
 21 of--Section--3,-subsection--(h)--hereof,-The-Board-shall-keep-the
 22 Commission-informed-of-what-states,-territories,-possessions,-and
 23 countries-fulfill-these-reciprocal-requirements].

24 "Sec^{10m} 5. REPORTING OF WELL LOGS. Every licensed [registered]
 25 water well driller drilling, deepening or otherwise altering a
 26 water well within this State shall make and keep, or cause to be
 27 made and kept, a legible and accurate well log, and ⁶/₇ within thirty

(30) [sixty--(60)] days from the completion or cessation of drilling, deepening or otherwise altering such a water well, shall deliver or transmit by certified mail a copy of such well log to the department [Commission], and the owner thereof or the person having had such well drilled. The well log required herein shall at the request in writing to the department [Commission], by certified mail, by the owner or the person having such well drilled be held as confidential matter and not made of public record.

Section 6. WATER WELL DRILLERS BOARD. (a) The Water Well Drillers Board shall be composed of nine (9) members appointed by the governor [three-ex-officio-and-six-appointed-as-follows,--to wit:-

" [(a)--One--(1)--member--of--the--Board--shall--be--the--chairman--of--the--Texas--Water--Commission--or--a--representative--from--his--staff--appointed--by--him--who--shall--be--a--nonvoting--member--and--shall--serve--in--an--advisory--capacity--only--in--the--event--that--the--functions--of--the--Texas--Water--Commission--are--transferred--to--the--Texas--Water--Development--Board,--then--the--member--appointed--hereby--shall--be--the--Executive--Director--of--the--Texas--Water--Development--Board--or--a--representative--from--his--staff--appointed--by--him--

" [(b)--One--(1)--member--shall--be--the--Executive--Secretary--of--the--State--Water--Pollution--Control--Board--or--a--representative--from--his--staff--appointed--by--him--and--shall--also--be--a--nonvoting--member--and--shall--serve--in--advisory--capacity--only--

" [(c)--One--(1)--member--shall--be--the--chairman--of--the--State--Board--of--Health--or--a--representative--from--his--staff--appointed--by--him^{7/8} and shall--also--be--a--nonvoting--member--and--shall--serve--in--an--advisory

1 capacity-only⁶].

2 "(b) [(d)] Six (6) members shall be water well drillers who
3 have [appointed-by-the-Governor-with-the-advice-and-consent-of-the
4 Senate,-under] the following qualifications [conditions,-te-wit]:

5 "(1) Each such driller shall be a citizen of the State of
6 Texas.

7 "(2) Each such driller shall have [a-minimum-of--ten--years¹]
8 experience in the water well drilling business prior to his
9 appointment.

10 "(3) Each such driller shall be conversant in water well
11 drilling, completion and plugging methods and techniques.

12 "(4) Each such driller shall be a licensed [registered] water
13 well driller.

14 "(5) One driller shall be selected from the State at large
15 and one of each such drillers shall be selected from the following
16 geographic areas of the State of Texas:

17 " A. Gulf Coast Area.

18 " B. Trans-Pecos Area.

19 " C. Central Texas Area.

20 " D. North-East Texas Area.

21 " E. Panhandle-South Plains Area.

22 "(6) [(e)] It is further provided that no more than one (1)
23 driller [Board] member may be employed by or own an interest in the
24 same company, firm or business association which is engaged in any
25 phase of the water well drilling business.

26 " [(f)]--The--first-six-(6)-Board-members-shall-be-appointed-for^{8/9}
27 the-following-terms--two-(2)-for-two-(2)-years,-two-(2)--for--four

~~(4)-years,-and-two-(2)-for-six-(6)-years-]~~

Insert Floor am. #1(1)

"(c) Three members must be representatives of the general public. A person is not eligible for appointment as a public member if the person or the person's spouse:

"(1) is licensed by an occupational regulatory agency in the field of water well drilling; or

"(2) is employed by, participates in the management of, or has, other than as a consumer, a financial interest in, a business entity or other organization related to the field of water well drilling.

Insert Floor am. #2(2)

"(d) ~~(197)~~ All terms shall expire on September 15 and all regular appointments shall be for terms of six (6) years.

"[~~(h)~~--The-initial-appointments-of-the-six-(6)--members--shall be-made-immediately-following-the-effective-date-of-this-Act-

"[~~(i)~~--The--six--(6)--appointed--Board--members--shall-receive compensation-and-travel-allowance-as-the-Legislature-may-provide-in the-General-Appropriation-Act-]

"^k~~(e)~~ Each member of the Board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Board.

"ⁱ~~(f)~~ [~~(j)~~] The Board shall hold meetings [a--regular--annual meeting,--it-may-hold-special-meetings] at the call of the chairman [or-at-the-request-of-three-Board-members]. ^{10/11}

"^j~~(g)~~ [~~(k)~~] A majority of the Board is a quorum for conducting business.

"^k~~(h)~~ [~~(l)~~] The Board shall elect a chairman[~~--who--shall--be presiding--officer,--and-who-shall-not-vote-except-when-there-shall~~

be-a-tie-vote,] by a majority vote at the first [regular] meeting each year.

" ²~~(j)~~ [(m)] The Board shall prepare [and-grade] examinations and pass upon qualifications of applicants for licenses and cause to be issued licenses to those who qualify.

" ^m~~(j)~~ [(n)] The Board shall design written examinations in such a manner as to disqualify any person lacking in the necessary knowledge of drilling, completion and plugging methods and techniques and of ground water formations to the extent that the performance by such person of services as a water well driller would create a serious risk of polluting fresh water. Provided, however, that each applicant shall have the right to have such examination given him orally, in lieu of in writing.

" [~~(e)~~--A-person-who-passes-the-examination-given-by-the--Board is-entitled-to-be-licensed-under-this-Act.]

" ⁷~~(k)~~ [(p)] Administration of examination:

" (1) The department [Commission] shall offer examinations prepared by the Board at least once a year and more frequently if more than 10 persons petition the Board [Commission] for an additional examination, or the Board should so provide.

" (2) The examination shall be so administered so that the one who grades an examination does not know whose paper he is grading. ^{1/2}

³~~(2)~~ ⁵ The department [Commission] shall maintain files of examination papers. A person, at any time within six months of the date that he is notified of the results of an examination, is entitled to inspect his examination paper during normal business hours at the department's offices [Commission's--office] for the

purpose of challenging the propriety of the questions, the method of grading, and the accuracy of grading.

" ~~[(4)--All-successful-applicants-who-pass-the-examination--may pay--the--\$25.00--registration--fee--to-the-Commission-and-obtain-a drillers-registration-certificate.]~~

" ⁰ ~~(3)~~ [(4)] The person who fails an examination may apply for a subsequent examination, but must pay the examination ^{12/13} [application] fee each time he applies. [He-may-not,--however,--be counted--among-the-ten-(10)-applicants-necessary-to-petition-for-an additional-examination.]

" ^{40x} Sec 6a. APPLICATION OF SUNSET ACT. The Texas Water Well Drillers Board is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless ~~[7--and unless]~~ continued in existence as provided by that Act, the board is abolished, and this Act expires effective September 1, 1993 [1981].

" ^{40x} Sec 7. RULES AND REGULATIONS. (a) The Board shall adopt, prescribe, promulgate, and enforce all rules and regulations reasonably necessary to effectuate the provisions of this Act, including all rules governing applications for a license [registration--certificates], qualifications of applicants, marking of water well drilling rigs and equipment, standards of conduct for licensed [registered] water well drillers and all rules governing procedure and practice before the Board. Be it further provided, however, that before the Board may adopt any substantive rule under this Act, it must mail a copy of the proposed rule or amendment together with an informative summary of the rule or amendment to

each person licensed under this Act, at least twenty (20) days prior to the proposed adoption [effective] date of such a proposed rule. [~~The procedural rules adopted by the Board shall be filed with the Secretary of State and shall become effective thirty (30) days thereafter.~~]

Insert Floor am. # ① (5)
 "(c) ~~(b)~~ Full authority is given the Board to enforce by injunction or other appropriate remedy, in courts of competent jurisdiction, any and all reasonable rules, regulations, decisions, determinations and orders promulgated by it which do not conflict with any law. It shall be the duty of the Attorney General to represent the Board when requested to do so.

"~~(a)~~ The Board shall propose and adopt all rules in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

4 " ~~(a)~~ ~~All rules and regulations proposed to be adopted and promulgated by the Board shall be approved in writing by the Attorney General and placed on file in the office of the Secretary of State for public inspection for at least thirty (30) days prior to their effective date. Any changes, alterations or revocations of such rules and regulations shall be likewise approved in writing by the Attorney General and which changes, alterations or revocations shall be filed in the office of Secretary of State prior to their effective date.~~

" ~~Section~~ ⁸ 8. REVOCATION OF LICENSES [~~CERTIFICATES~~ OF REGISTRATION]. (a) The license [~~certificate of registration~~] of any [~~registered~~] water well driller who violates any provision of this Act or any substantive rule or regulation of the Board

1 promulgated under the authority of this Act may be revoked or
2 suspended by the Board. Grounds for revocation or suspension of a
3 driller's license [~~certificate~~] shall include intentional
4 misstatement or misrepresentation of fact on an application or well
5 log; failure to keep and transmit water well logs as provided
6 herein; failure to advise a person for whom a well is being drilled
7 that injurious water has been encountered, is a pollution hazard,
8 and must be forthwith plugged in an acceptable manner; or being
9 found to be an incompetent water well driller.

10 " (b) The Board shall, before suspending or revoking any
11 license [~~certificate-of-registration~~], notify the holder in writing
12 of any charges [~~changes~~] made in order to afford such holder an
13 opportunity to be heard, which notification shall be given at least
14 ten (10) days prior to the date set for hearing, and which shall
15 prescribe the time and place of the hearing. Such written notice
16 may be served by mailing same by registered mail to the last known
17 business address of such person. At such hearing such person and
18 all persons complaining against him, as well as any other witness
19 whose testimony is relied upon to substantiate the charges made,
20 shall be entitled to be present. He shall also be entitled to ¹⁵/₁₆
21 present evidence, oral and written, as may be relevant to the
22 inquiry. In such hearing all witnesses shall be duly sworn and a
23 record of the proceedings shall be taken. Any party to the
24 proceedings desiring it shall be furnished with a copy of the
25 record upon the payment to the Board of a fee not to exceed fifty
26 cents (50¢) per page.

27 " (c) Every decision and order in a revocation or suspension

hearing rendered by the Board shall be in writing and shall set forth briefly the findings of fact and Board's conclusions. Parties to the proceedings shall be notified of the decision or order in person or by mail and forwarded a copy of same; such orders or decisions shall be transmitted no later than thirty (30) days of conclusion of the hearing.

" Sec¹⁰⁷ 9. APPEAL OF BOARD ACTION. (a) A person affected by any ruling, order, decision, or other act of the Board may appeal by filing a petition in a District Court in the county in which the alleged violation occurred.

" (b) Petition must be filed within thirty (30) days after the date of the Board's action, or, in case of a ruling, order, or decision, within thirty (30) days after its effective date.

" (c) Service of citation on the Board must be accomplished within thirty (30) days after the date the petition was filed. Citation may be served on the Executive Director of the department [~~Water--Development--Board~~] or on any member of the Water Well Drillers Board.

" (d) The plaintiff shall pursue his action with reasonable diligence. ^{16/17}

" (e) The substantial evidence rule applies in the judicial review of any Board action, ruling, order, or decision [~~Any--ruling of-the-Board-may-be-appealed-in-the-same-manner-as-appeals-from-the justice---court--to--the--county--court~~]. All administrative or executive action taken prior to the filing of the suit shall continue in force and effect until the rights of the parties thereto shall be determined by the court upon a trial of the

1 matters in controversy.

2 " ^{tion} Sect 10. DUTIES OF THE DEPARTMENT [COMMISSION]. (a) The
3 department [Commission] shall furnish the Board with necessary
4 clerical [administrative] services, including space for holding
5 examinations; [~~preetering--examinations;~~] printing examinations;
6 printing and mailing licenses; sending notices, before August 1 of
7 each year that license must be renewed; collecting fees and issuing
8 receipts; [~~keeping-a--current--register--of--licensees;~~] employing
9 secretarial assistance; replying to routine requests for
10 information; printing forms and information; typing all letters to
11 be reproduced; maintaining records and completed examinations; and
12 keeping records of receipts and disbursements; providing necessary
13 legal services; and providing necessary investigative services, and
14 the department [Commission] shall promulgate procedures and
15 standards for plugging water wells [~~under-Section-15-of-this--Act~~].

16 " (b) The Board shall have access to information kept by the
17 department [Commission] under this Act.

18 " (c) The department [Commission] shall adopt the necessary
19 procedural rules in order to carry out the imposed duties under
20 this Section of this Act. ^{17/2}

21 ^{Insert Floor am. # (1) (4)}
22 " ⁶ (d) [~~Full-authority-is-given-the-Commission--to--enforce--by~~
23 ~~injunction--or--other--appropriate--remedy,--in-courts-of-competent~~
24 ~~jurisdiction,--any---and---all---rules,---regulations,---decisions,~~
25 ~~determinations--and--orders-promulgated-by-it-which-do-not-conflict~~
26 ~~with-any-law-~~

27 " [~~Sect 11--EXCEPTION--OF--DROUGHT---DISASTER---AREAS----~~ Upon
petition--of-the-commissioners-court-of-any-county-the-Governor-may

1 ~~proclaim-the-county-a--drought--disaster--area---if--the--Governor~~
 2 ~~issues-the-proclamation-that-the-county-is-a-drought-disaster-area,~~
 3 ~~the-terms-and-provisions-of-this-Act-are-suspended-in-such-a-county~~
 4 ~~for--the--length--of--time--specified--in--the-proclamation,-except~~
 5 ~~insofar-as-said-Act-applies-to-the-plugging-of-water-wells-]~~

6 " Sect^{ion} 11 [12]. DISPOSITION OF REVENUES. All money collected
 7 by the department [~~Commission~~] under the provisions of this Act
 8 shall be placed in the General Revenue Fund.

9 " Sect^{ion} 12 [13]. CIVIL PENALTY. Any person who fails to comply
 10 with the provisions of this Act, or with any rule or regulation
 11 promulgated by the board or the department [~~commission~~] under this
 12 Act, [~~or-with-any-term,-condition-or-provision-in-his-permit-issued~~
 13 ~~pursuant-to-this-Act,~~] shall be subject to a civil penalty in any
 14 sum not exceeding One Thousand Dollars (\$1,000) for¹⁸/₁₉ each day of
 15 noncompliance and for each act of noncompliance, as the court may
 16 deem proper. A firm, partnership, association, corporation, or
 17 other group or combination with which the person was connected in
 18 relation to the act of noncompliance is also subject to the civil
 19 penalty. The action may be brought by the board [~~or--the~~
 20 ~~commission,-as-appropriate,~~] in any court of competent jurisdiction
 21 in the county where the offending activity is occurring or where
 22 the defendant resides. Full authority is also given the executive
 23 director [~~board--or--commission,-as--appropriate,~~] to enforce by
 24 injunction, mandatory injunction or other appropriate remedy, in
 25 courts having jurisdiction in the county where the offending
 26 activity is occurring, [~~any--and--all---reasonable---rules---and~~
 27 ~~regulations--promulgated--by-it-which-do-not-conflict-with-any-law,~~

1 ~~and-all-of-the-terms,-conditions-and-provisions-of--permits--issued~~
 2 ~~by-the-board-or-commission]~~ pursuant to the provisions of this Act.
 3 At the request of the board or the executive director [~~commission~~],
 4 the Attorney General shall institute and conduct a suit in the name
 5 of the State of Texas for injunctive relief or to recover the civil
 6 penalty, or for both the injunctive relief and civil penalty,
 7 authorized in this section. Any party to a suit may appeal from a
 8 final judgment as in other civil cases. The obtaining of a license
 9 [~~permit~~] under the provisions of this Act by a person shall not act
 10 to relieve that person from liability under any statutory law or
 11 the Common Law.

12 "Sec^{tion} 13 [~~14~~]. MARKING RIGS WITH IDENTIFICATION NUMBER. It
 13 is the duty of all licensed [~~registered~~] water well drillers to see
 14 that all rigs used by them or their employees in the water well ¹⁹/₂₀
 15 drilling business are marked with legible identification numbers at
 16 all times; the "identification number" to be used on the rigs shall
 17 be the "license number" which appears on the driller's license
 18 [~~registration--certificate~~]; the Board shall set out in detail in
 19 its rules the specific method and manner for marking the rigs.
 20 [~~The--driller--shall--furnish--a--sworn--statement--that--he--has--complied~~
 21 ~~with--this--provision--of--the--Act--with--his--annual--renewal--fee--each~~
 22 ~~year.~~] Any licensed driller has thirty (30) [~~one-hundred-eighty~~
 23 [~~180~~]] days to comply with the regulations provided in this section
 24 [~~Section-14~~].

25 "Sec^{tion} 14 [~~15~~]. PLUGGING OF WATER WELLS. (a) It shall be the
 26 duty of each driller licensed [~~registered~~] under this Act to inform
 27 forthwith the landowner or person having a well drilled when water

[is] injurious to vegetation, to land or to fresh water has been encountered and such well must be plugged or properly completed in order to avoid injury or pollution.

" (b) It shall be the duty of the driller [~~landowner-or-person having--a-well-drilled,-upon-being-so-informed,-~~] to see that such a well is forthwith plugged or completed under standards and procedures promulgated [~~set~~] by the department [~~Texas--Water Commission~~].

" (c) It shall be the duty of whoever shall plug such a well to complete a plugging report within thirty (30) days and submit it to the executive director [~~Commission~~]; appropriate forms shall be furnished by the executive director [~~Commission~~] upon request.

" ^{tion} ~~Sec~~ 15 [~~17~~]. CONSTRUCTION. Nothing in this Act shall be construed as affecting the ownership, or the rights of owners of ^{3%}/₆₁ the land, in underground water.

" ^{tion} ~~Sec~~ 16 [~~18~~]. SEVERABILITY CLAUSE. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without defeating the purpose or objective of the provision, and to this end, the provisions of this Act are declared to be severable.

" ^{tion} ~~Sec~~ 17 [~~20~~]. TRANSFER OF FUNCTIONS. In the event that the functions of the Texas Department of Water Resources [~~Water Commission~~] necessary to the proper implementation of its duties under this Act are transferred to [~~the--Texas--Water--Development Board-or~~] any other agency, the authority given herein to the Texas Department of Water Resources [~~Water--Commission~~] shall be

1 transferred to [~~the-Texas-Water-Development-Board--er~~] such other
2 agency. "

3 SECTION 2. Each valid certificate of registration issued by
4 the board on or before September 1, 1981, continues in effect until
5 its regular expiration date.

6 SECTION 3. (a) Except for the ex officio members, incumbent
7 members of the board on the effective date of this Act serve the
8 remainder of their terms.

9 (b) The governor shall appoint one public member for a term
10 expiring on September 15, 1983, one public member for a term
11 expiring on September 15, 1985, and one public member for a term
12 expiring on September 15, 1987.

13 SECTION 4. This Act takes effect September 1, 1981.

14 SECTION 5. The importance of this legislation and the ^{2 1/2}
15 crowded condition of the calendars in both houses create an
16 emergency and an imperative public necessity that the
17 constitutional rule requiring bills to be read on three several
18 days in each house be suspended, and this rule is hereby suspended.

April 29 1981 Engrossed
Patsy Law
Engrossing Clerk

I certify that the attached is a true and correct
copy of SB 915, which was
received from the Senate on APR 30 1981 and
referred to the Committee on Government Organization
Betty M. Mendenhall
Chief Clerk of the House

By: Traeger

S.B. No. 915

A BILL TO BE ENTITLED

AN ACT

relating to continuation of the functions of the Texas Water Well
Drillers Board and regulation of water well drillers; amending the
Water Well Drillers Act, as amended (Article 7621e, Vernon's Texas
Civil Statutes).

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Water Well Drillers Act, as amended (Article
7621e, Vernon's Texas Civil Statutes), is amended to read as
follows:

"Section 1. SHORT TITLE. This Act shall be known and may be
cited as 'The Water Well Drillers Act.'

"Section 2. DEFINITIONS. The following words and phrases as
used in this Act shall have the following meanings unless a
different meaning clearly appears from the context. The singular
form shall also mean plural form and the masculine gender shall
also include the feminine and neuter genders.

"(a) 'Person' shall mean any individual, whether or not
connected with a firm, partnership, association, corporation, or
any other group or combination acting as a unit.

"(b) ~~'Commission' shall mean the Texas Water--Commission--or
its--successor--~~

"[~~e~~] 'Board' shall mean the Texas Water Well Drillers
Board.

"(c) 'Executive director' shall mean the executive director
of the Texas Department of Water Resources.

"(d) 'Department' shall mean the Texas Department of Water

1 Resources.

2 "(e) [~~(d)~~] 'Water well' shall mean any artificial excavation
3 constructed for the purpose of exploring for or producing ground
4 water. The term, however, shall not include any test or blast
5 holes in quarries or mines, or any well or excavation for the
6 purpose of exploring for, or producing oil, gas, or any other
7 minerals unless the holes are used to produce ground water.

8 "(f) [~~(e)~~] 'Water well driller' shall mean any person
9 (including owner, operator, and drilling supervisor) who engages
10 for compensation in the drilling, boring, coring, or construction
11 of any water well in this State. The term, however, shall not
12 include any person who drills, bores, cores, or constructs a water
13 well on his own property for his own use or a person who assists in
14 the construction of a water well under the direct supervision of a
15 licensed [~~registered~~] water well driller and is not primarily
16 responsible for the drilling operations.

17 "(g) [~~(f)~~] 'Licensed [~~Registered~~] water well driller' shall
18 mean any person who holds a license [~~certificate~~] issued by the
19 State of Texas pursuant to the provisions of this Act.

20 "(h) [~~(g)~~] 'Pollution' shall mean the changing of the
21 physical, thermal, chemical, or biological quality of or the
22 contamination of any water in a way that makes the water harmful to
23 humans, animal life, vegetation, or property or to the public
24 health, safety, or welfare or that impairs the usefulness or the
25 public enjoyment of the water for any lawful or reasonable purpose
26 [~~an impairment of the physical, chemical, or biological properties~~
27 ~~of water by the acts or instrumentalities of man to a degree which~~

~~results-in-a-material-and-adverse-effect-upon--the--quality--as--to
destry-possible-consumptive-or-beneficial-use-of-such-waters].~~

"(i) [~~h~~]' Well log' shall mean a log accurately kept, at the time of drilling, showing the depth, thickness, character of the different strata penetrated, location of water-bearing strata, depth, size and character of casing installed, together with any other data or information required by the Board, on forms prescribed by the Board.

"(j) [~~i~~] 'Water Well Drillers Board' shall mean an examining board consisting of nine (9) members, all [~~three-of-whom shall-be-ex-officie-nonvoting-members-and-six~~] of whom shall be voting members appointed by the Governor with the advice and consent of the Senate as hereinafter provided.

"(k) [~~j~~] 'License [~~Registration~~] fee' shall mean the initial fee to be paid by a driller under this Act [~~which-shall-be, unless-otherwise-provided-herein,-\$25.00~~].

"(l) [~~k~~] 'Renewal fee' shall mean that fee paid by a previously licensed [~~registered~~] driller [~~which-shall-be-\$25.00-per annum~~].

"(m) [~~l~~] 'Examination fee' shall mean that [~~\$10.00~~] non-refundable fee required of each applicant for each examination.

"Section 3. LICENSE [~~REGISTRATION~~] REQUIRED. (a) It shall be unlawful for any person to act as or to offer to perform services as a water well driller without first obtaining a license [~~certificate-of-registration~~] in the manner prescribed herein and pursuant to the rules of the Water Well Drillers Board.

"(b) Applications shall contain the name of the applicant,

his business address, his permanent mailing address, and such other relevant information as the Board may require.

"(c) At the time of making application, each applicant shall pay to the department [~~Commission~~] the required examination fee which shall be non-refundable; and the successful candidates upon notification of eligibility shall pay to the department [~~Commission~~] the license [~~registration~~] fee.

"(d) All licenses [~~certificates--of--registration~~] issued under this Act shall expire on August 31 of each year; and on or before that day, each person holding a license [~~certificate-of-registration~~] shall pay to the department [~~Commission--the--sum--of \$25.00--as~~] an annual renewal fee. [~~Provided-further,--however,--any driller-who-allows-his-license-to-lapse-shall-be-given--a--one-year grace--period--in--which--to--renew--his--certificate-by-paying-the accrued-renewal-fee,--without--the--need--of--taking--the--drillers examination-~~] A person may renew his unexpired license by paying

to the department before the expiration date of the license the required renewal fee. If a person's license has been expired for 90 days or less, the person may renew the license by paying to the department the required renewal fee and a fee that is one-half of the examination fee for the license. If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the department all unpaid renewal fees and a fee that is equal to the examination fee for the license. If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the

1 requirements and procedures for obtaining an original license.

2 "(e) The department shall maintain a current register of
3 licensees.

4 "(f) [(e)] A license [certificate-of-registration] shall not
5 be transferable or assignable.

6 "(g) [(f)] A duplicate license [certificate-of-registration]
7 to replace a lost or destroyed license [certificate] shall be
8 issued by the department [Commission] upon proper application and
9 payment of a [\$1.00] fee.

10 "[(g)--Any--water-well-driller-in-this-State-on-the-effective
11 date-of-this-Act-shall-be-entitled-to-a-certificate-of-registration
12 upon-the-filing-of-an-application-no-later-than--August--31--1966,
13 and-the-payment-of-a-\$25.00-registration-or-renewal-fee.]

14 "(h) The Board shall establish reasonable and necessary fees
15 for the administration of this Act.

16 "(i) [(h)] Each applicant shall have been a resident of the
17 State of Texas for not less than 90 days prior to making
18 application for a license [registration] as a water well driller.

19 "Section 3A. LICENSES. The board by rule may adopt a system
20 under which licenses [certificates--of--registration] expire on
21 various dates during the year. For the year in which the license
22 [certification] expiration date is changed, license [certificate]
23 renewal fees payable on August 31 shall be prorated on a monthly
24 basis so that each license [certificate] holder shall pay only that
25 portion of the license [certification] renewal fee which is
26 allocable to the number of months during which the license
27 [certification] is valid. On renewal of the license

[certification] on the new expiration date, the total license
[certification] renewal fee is payable.

"Section 4. ENDORSEMENT [RECIPROCITY]. The Board may
develop rules specifying grounds by which the department may waive
any license requirement for an applicant with a valid license from
another state having license requirements substantially equivalent
to those of this state [The-Commission;-upon-application--therefor
and--upon--the--payment-of-the-proper-registration-fee;-may-issue-a
certificate-of-registration-as-a-registered-water-well--driller--to
any-person-who-holds-a-certificate-of-qualification-or-registration
issued--to--him--by--proper--authority-in-any-state-or-territory-or
possession-of-the-United-States;-or-of-any-other--country;-if--the
registration-standard-under-which-said-certificate-was-issued-is-of
a--standard-not-lower-than-that-specified-by-the-provisions-of-this
Act;-and-the-rules-of-the-Water--Well--Drillers--Board--promulgated
pursuant--to--the--provisions-hereof;-and-if-that-particular-state;-
territory;-or-possession-of-the-United-States;-or--country--extends
similar--privileges--to-the-persons-registered-under-the-provisions
of-this-Act;-provided;-however;-that-before-such-applicant--may--be
registered;-he-must-show-compliance-with-the-residency-requirements
of--Section--3;-sub-section--(h)--hereof;-The-Board-shall-keep-the
Commission-informed-of-what-states;-territories;-possessions;-and
countries-fulfill-these-reciprocal-requirements].

"Section 5. REPORTING OF WELL LOGS. Every licensed
[registered] water well driller drilling, deepening or otherwise
altering a water well within this State shall make and keep, or
cause to be made and kept, a legible and accurate well log, and

1 within thirty (30) [~~sixty--(60)~~] days from the completion or
 2 cessation of drilling, deepening or otherwise altering such a water
 3 well, shall deliver or transmit by certified mail a copy of such
 4 well log to the department [~~Commission~~], and the owner thereof or
 5 the person having had such well drilled. The well log required
 6 herein shall at the request in writing to the department
 7 [~~Commission~~], by certified mail, by the owner or the person having
 8 such well drilled be held as confidential matter and not made of
 9 public record.

10 "Section 6. WATER WELL DRILLERS BOARD. (a) The Water Well
 11 Drillers Board shall be composed of nine (9) members appointed by
 12 the governor [~~three ex-officio and six appointed as follows, to~~
 13 ~~with~~]

14 "[~~(a) One (1) member of the Board shall be the chairman of~~
 15 ~~the Texas Water Commission or a representative from his staff~~
 16 ~~appointed by him who shall be a nonvoting member and shall serve in~~
 17 ~~an advisory capacity only. In the event that the functions of the~~
 18 ~~Texas Water Commission are transferred to the Texas Water~~
 19 ~~Development Board, then the member appointed hereby shall be the~~
 20 ~~Executive Director of the Texas Water Development Board or a~~
 21 ~~representative from his staff appointed by him.~~"]

22 "[~~(b) One (1) member shall be the Executive Secretary of the~~
 23 ~~State Water Pollution Control Board or a representative from his~~
 24 ~~staff appointed by him and shall also be a nonvoting member and~~
 25 ~~shall serve in advisory capacity only.~~"]

26 "[~~(c) One (1) member shall be the chairman of the State~~
 27 ~~Board of Health or a representative from his staff appointed by him~~"]

and-shall-also-be-a-nonvoting-member-and-shall-serve-in-an-advisory capacity-only].

"(b) [~~d~~] Six (6) members shall be water well drillers who have [~~appointed-by-the-Governor-with-the-advice-and-consent-of-the Senate,-under~~] the following qualifications [~~conditions,-to-wit~~]:

"(1) Each such driller shall be a citizen of the State of Texas.

"(2) Each such driller shall have [~~a-minimum-of-ten-years~~] experience in the water well drilling business prior to his appointment.

"(3) Each such driller shall be conversant in water well drilling, completion and plugging methods and techniques.

"(4) Each such driller shall be a licensed [~~registered~~] water well driller.

"(5) One driller shall be selected from the State at large and one of each such drillers shall be selected from the following geographic areas of the State of Texas:

"A. Gulf Coast Area.

"B. Trans-Pecos Area.

"C. Central Texas Area.

"D. North-East Texas Area.

"E. Panhandle-South Plains Area.

"(6) [~~e~~] It is further provided that no more than one (1) driller [~~Board~~] member may be employed by or own an interest in the same company, firm or business association which is engaged in any phase of the water well drilling business.

"[~~f~~]-The-first-six-(6)-Board-members-shall-be-appointed-for

~~the following terms:--two-(2)-for-two-(2)-years, two-(2)--for--four~~
~~(4)-years, and two-(2)-for-six-(6)-years.]~~

"(c) Three members must be representatives of the general public. A person is not eligible for appointment as a public member if the person or the person's spouse:

"(1) is licensed by an occupational regulatory agency in the field of water well drilling;

"(2) is employed by, participates in the management of, or has, other than as a consumer, a financial interest in, a business entity or organization related to the field of water well drilling;
or

"(3) owns, controls, or has, directly or indirectly, an interest in a business entity that provides water well drilling services or that sells, manufactures, or distributes water well drilling equipment.

"(d) A member of the Board, employee of the Board, or an employee of the department whose duties are related to the administration of this Act may not be an officer, employee, or paid consultant of a trade association in the water well drilling field. A member of the Board, employee of the Board, or employee of the department whose duties are related to the administration of this Act may not be related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil

Statutes), may not serve as a member of the Board or act as counsel to the Board.

"(e) It is ground for removal from the Board if a member:

"(1) does not have at the time of appointment the qualifications required by Subsection (b) or (c) of this section for appointment to the Board;

"(2) does not maintain during the service on the Board the qualifications required by Subsection (b) or (c) of this section for appointment to the Board; or

"(3) violates a prohibition established by Subsection (d) of this section.

"(f) If a ground for removal of a member from the Board exists, the Board's actions during the existence of the ground for removal are not invalid for that reason.

"(g) All terms shall expire on September 15 and all regular appointments shall be for terms of six (6) years.

~~"[(h) --The-initial-appointments-of-the-six-(6)-members--shall be-made-immediately-following-the-effective-date-of-this-Act-~~

~~"[(i) --The--six--(6)--appointed--Board--members--shall-receive compensation-and-travel-allowance-as-the-Legislature-may-provide-in the-General-Appropriation-Act-]~~

"(h) Each member of the Board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Board.

"(i) [(j)] The Board shall hold meetings [a--regular--annual meeting;--it-may-hold-special-meetings] at the call of the chairman [or-at-the-request-of-three-Board-members].

1 "(j) [(k)] A majority of the Board is a quorum for
2 conducting business.

3 "(k) [(l)] The Board shall elect a chairman[~~,-who--shall--be~~
4 ~~presiding--officer,-and-who-shall-not-vote-except-when-there-shall~~
5 ~~be-a-tie-vote,-]~~ by a majority vote at the first [regular] meeting
6 each year.

7 "(l) [(m)] The Board shall prepare [and-grade] examinations
8 and pass upon qualifications of applicants for licenses and cause
9 to be issued licenses to those who qualify.

10 "(m) [(n)] The Board shall design written examinations in
11 such a manner as to disqualify any person lacking in the necessary
12 knowledge of drilling, completion and plugging methods and
13 techniques and of ground water formations to the extent that the
14 performance by such person of services as a water well driller
15 would create a serious risk of polluting fresh water. Provided,
16 however, that each applicant shall have the right to have such
17 examination given him orally, in lieu of in writing.

18 "~~[(o)--A-person-who-passes-the-examination-given-by-the-Board~~
19 ~~is-entitled-to-be-licensed-under-this-Aet.-]~~

20 "(n) [(p)] Administration of examination:

21 "(1) The department [~~Commission~~] shall offer examinations
22 prepared by the Board at least once a year and more frequently if
23 more than 10 persons petition the Board [~~Commission~~] for an
24 additional examination, or the Board should so provide.

25 "(2) The examination shall be so administered so that the
26 one who grades an examination does not know whose paper he is
27 grading.

1 "(3) Within 30 days after the day on which a licensing
 2 examination is administered under this article, the department
 3 shall notify each examinee of the results of the examination.
 4 However, if an examination is graded or reviewed by a national
 5 testing service, the department shall notify examinees of the
 6 results of the examination within two weeks after the day that the
 7 Board receives the results from the testing service. If the notice
 8 of the examination results will be delayed for longer than 90 days
 9 after the examination date, the department shall notify the
 10 examinee of the reason for the delay before the 90th day.

11 "(4) If requested in writing by a person who fails the
 12 licensing examination administered under this article, the
 13 department shall furnish the person with an analysis of the
 14 person's performance on the examination as prescribed by Board
 15 rule.

16 "(5) [(3)] The department [Commission] shall maintain files
 17 of examination papers. A person, at any time within six months of
 18 the date that he is notified of the results of an examination, is
 19 entitled to inspect his examination paper during normal business
 20 hours at the department's offices [Commission's--office] for the
 21 purpose of challenging the propriety of the questions, the method
 22 of grading, and the accuracy of grading.

23 "[(1)--All-succcessful-applicants-who-pass-the-examination-may
 24 pay-the-\$25-00-registration-fee-to--the--Commission--and--obtain--a
 25 drillers-registration-certificate.]

26 "(o) [(a)] The person who fails an examination may apply for
 27 a subsequent examination, but must pay the examination

1 [application] fee each time he applies. [He-may-not,--however,--be
2 counted--among-the-ten-(10)-applicants-necessary-to-petition-for-an
3 additional-examination.]

4 "Section 6a. APPLICATION OF SUNSET ACT. The Texas Water
5 Well Drillers Board is subject to the Texas Sunset Act, as amended
6 (Article 5429k, Vernon's Texas Civil Statutes). Unless[7--and
7 unless] continued in existence as provided by that Act, the board
8 is abolished, and this Act expires effective September 1, 1993
9 [1981].

10 "Section 7. RULES AND REGULATIONS. (a) The Board shall
11 adopt, prescribe, promulgate, and enforce all rules and regulations
12 reasonably necessary to effectuate the provisions of this Act,
13 including all rules governing applications for a license
14 [registration-certificates], qualifications of applicants, marking
15 of water well drilling rigs and equipment, standards of conduct for
16 licensed [registered] water well drillers and all rules governing
17 procedure and practice before the Board. Be it further provided,
18 however, that before the Board may adopt any substantive rule under
19 this Act, it must mail a copy of the proposed rule or amendment
20 together with an informative summary of the rule or amendment to
21 each person licensed under this Act, at least twenty (20) days
22 prior to the proposed adoption [effective] date of such a proposed
23 rule. [The--procedural--rules-adopted-by-the-Board-shall-be-filed
24 with-the-Secretary-of-State-and-shall-become-effective-thirty--(30)
25 days-thereafter.]

26 "(b) The Board may not adopt rules restricting competitive
27 bidding or advertising by a person regulated by the Board except to

prohibit false, misleading, or deceptive practices by the person.
The Board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the Board a rule that:

"(1) restricts the person's use of any medium for advertising;

"(2) restricts the person's personal appearance or use of his personal voice in an advertisement;

"(3) relates to the size or duration of an advertisement by the person; or

"(4) restricts the person's advertisement under a trade name.

"(c) [(b)] Full authority is given the Board to enforce by injunction or other appropriate remedy, in courts of competent jurisdiction, any and all reasonable rules, regulations, decisions, determinations and orders promulgated by it which do not conflict with any law. It shall be the duty of the Attorney General to represent the Board when requested to do so.

"(d) The Board shall propose and adopt all rules in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

"[(e)--All-rules-and-regulations-proposed-to-be--adepted--and promulgated--by--the--Board--shall--be--approved--in-writing-by-the Attorney-General-and-placed-on-file-in-the-office-of-the--Secretary of--State-for-public-inspection-for-at-least-thirty-(30)-days-prior to-their-effective-date--Any-changes,-alterations--or--revocations of-such-rules-and-regulations-shall-be-likewise-approved-in-writing

by---the---Attorney--General--and--which--changes,--alterations--or
 revocations-shall-be-filed-in-the--office--of--Secretary--of--State
 prior-to-their-effective-date.]

"Section 8. REVOCATION OF LICENSES [~~CERTIFICATES~~---OF
 REGISTRATION]. (a) The license [~~certificate-of--registration~~] of
 any [~~registered~~] water well driller who violates any provision of
 this Act or any substantive rule or regulation of the Board
 promulgated under the authority of this Act may be revoked or
 suspended by the Board. Grounds for revocation or suspension of a
 driller's license [~~certificate~~] shall include intentional
 misstatement or misrepresentation of fact on an application or well
 log; failure to keep and transmit water well logs as provided
 herein; failure to advise a person for whom a well is being drilled
 that injurious water has been encountered, is a pollution hazard,
 and must be forthwith plugged in an acceptable manner; or being
 found to be an incompetent water well driller.

"(b) The Board shall, before suspending or revoking any
license [~~certificate-of-registration~~], notify the holder in writing
 of any charges [~~changes~~] made in order to afford such holder an
 opportunity to be heard, which notification shall be given at least
 ten (10) days prior to the date set for hearing, and which shall
 prescribe the time and place of the hearing. Such written notice
 may be served by mailing same by registered mail to the last known
 business address of such person. At such hearing such person and
 all persons complaining against him, as well as any other witness
 whose testimony is relied upon to substantiate the charges made,
 shall be entitled to be present. He shall also be entitled to

present evidence, oral and written as may be relevant to the inquiry. In such hearing all witnesses shall be duly sworn and a record of the proceedings shall be taken. Any party to the proceedings desiring it shall be furnished with a copy of the record upon the payment to the Board of a fee not to exceed fifty cents (50¢) per page.

"(c) Every decision and order in a revocation or suspension hearing rendered by the Board shall be in writing and shall set forth briefly the findings of fact and Board's conclusions. Parties to the proceedings shall be notified of the decision or order in person or by mail and forwarded a copy of same; such orders or decisions shall be transmitted no later than thirty (30) days of conclusion of the hearing.

"Section 9. APPEAL OF BOARD ACTION. (a) A person affected by any ruling, order, decision, or other act of the Board may appeal by filing a petition in a District Court in the county in which the alleged violation occurred.

"(b) Petition must be filed within thirty (30) days after the date of the Board's action, or, in case of a ruling, order, or decision, within thirty (30) days after its effective date.

"(c) Service of citation on the Board must be accomplished within thirty (30) days after the date the petition was filed. Citation may be served on the Executive Director of the department [Water--Development--Board] or on any member of the Water Well Drillers Board.

"(d) The plaintiff shall pursue his action with reasonable diligence.

1 "(e) The substantial evidence rule applies in the judicial
 2 review of any Board action, ruling, order, or decision [~~Any--ruling~~
 3 ~~of-the-Board-may-be-appealed-in-the-same-manner-as-appeals-from-the~~
 4 ~~justice---court--to--the--county--court~~]. All administrative or
 5 executive action taken prior to the filing of the suit shall
 6 continue in force and effect until the rights of the parties
 7 thereto shall be determined by the court upon a trial of the
 8 matters in controversy.

9 "Section 10. DUTIES OF THE DEPARTMENT [~~COMMISSION~~]. (a)
 10 The department [~~Commission~~] shall furnish the Board with necessary
 11 clerical [~~administrative~~] services, including space for holding
 12 examinations; [~~preparing--examinations,~~] printing examinations;
 13 printing and mailing licenses; sending notices, before August 1 of
 14 each year that license must be renewed; collecting fees and issuing
 15 receipts; [~~keeping-a--current--register--of--licensees,~~] employing
 16 secretarial assistance; replying to routine requests for
 17 information; printing forms and information; typing all letters to
 18 be reproduced; maintaining records and completed examinations; and
 19 keeping records of receipts and disbursements; providing necessary
 20 legal services; and providing necessary investigative services, and
 21 the department [~~Commission~~] shall promulgate procedures and
 22 standards for plugging water wells [~~under-Section-15-of-this--Act~~].

23 "(b) The Board shall have access to information kept by the
 24 department [~~Commission~~] under this Act.

25 "(c) The department [~~Commission~~] shall adopt the necessary
 26 procedural rules in order to carry out the imposed duties under
 27 this Section of this Act.

1 "(d) The department shall keep an information file about
2 each complaint filed with the department relating to a licensee.

3 "(e) If a written complaint is filed with the department
4 relating to a licensee, the department, at least as frequently as
5 quarterly, shall notify the complainant of the status of the
6 complaint until its final disposition unless the notification would
7 jeopardize an undercover investigation. [Full--authority--is--given
8 the--Commission--to--enforce--by--injunction--or--other-appropriate
9 remedy,--in-courts-of-competent-jurisdiction,--any--and--all--rules,
10 regulations,--decisions,--determinations-and-orders-promulgated-by-it
11 which-do-not-conflict-with-any-law.

12 "[Section 11--EXCEPTION--OF--DROUGHT--DISASTER--AREAS--Upon
13 petition-of-the-commissioners-court-of-any-county-the-Governor--may
14 proclaim--the--county--a--drought--disaster--area--If-the-Governor
15 issues-the-proclamation-that-the-county-is-a-drought-disaster-area,
16 the-terms-and-provisions-of-this-Act-are-suspended-in-such-a-county
17 for-the-length-of--time--specified--in--the--proclamation,--except
18 insofar-as-said-Act-applies-to-the-plugging-of-water-wells.]

19 "Section 11 [12]. DISPOSITION OF REVENUES. All money
20 collected by the department [Commission] under the provisions of
21 this Act shall be placed in the General Revenue Fund.

22 "Section 12 [13]. CIVIL PENALTY. Any person who fails to
23 comply with the provisions of this Act, or with any rule or
24 regulation promulgated by the board or the department [commission]
25 under this Act, [or-with-any-term,--condition-or--provision--in--his
26 permit--issued--pursuant--to-this-Act,] shall be subject to a civil
27 penalty in any sum not exceeding One Thousand Dollars (\$1,000) for

1 each day of noncompliance and for each act of noncompliance, as the
 2 court may deem proper. A firm, partnership, association,
 3 corporation, or other group or combination with which the person
 4 was connected in relation to the act of noncompliance is also
 5 subject to the civil penalty. The action may be brought by the
 6 board [~~ex--the--commission,--as--appropriate,~~] in any court of
 7 competent jurisdiction in the county where the offending activity
 8 is occurring or where the defendant resides. Full authority is
 9 also given the executive director [~~board--ex--commission,--as~~
 10 ~~appropriate,~~] to enforce by injunction, mandatory injunction or
 11 other appropriate remedy, in courts having jurisdiction in the
 12 county where the offending activity is occurring, [~~any-and-all~~
 13 ~~reasonable-rules-and-regulations-promulgated-by--it--which--do--not~~
 14 ~~conflict--with--any--law,--and--all--of--the--terms,--conditions-and~~
 15 ~~provisions-of-permits-issued-by-the-board-ex--commission]~~ pursuant
 16 to the provisions of this Act. At the request of the board or the
 17 executive director [~~commission~~], the Attorney General shall
 18 institute and conduct a suit in the name of the State of Texas for
 19 injunctive relief or to recover the civil penalty, or for both the
 20 injunctive relief and civil penalty, authorized in this section.
 21 Any party to a suit may appeal from a final judgment as in other
 22 civil cases. The obtaining of a license [~~permit~~] under the
 23 provisions of this Act by a person shall not act to relieve that
 24 person from liability under any statutory law or the Common Law.

25 "Section 13 [~~14~~]. MARKING RIGS WITH IDENTIFICATION NUMBER.

26 It is the duty of all licensed [~~registered~~] water well drillers to
 27 see that all rigs used by them or their employees in the water well

drilling business are marked with legible identification numbers at all times; the 'identification number' to be used on the rigs shall be the 'license number' which appears on the driller's license [~~registration-certificate~~]; the Board shall set out in detail in its rules the specific method and manner for marking the rigs. [~~The-driller-shall-furnish-a-sworn-statement-that-he--has--complied with--this--provision--of--the-Act-with-his-annual-renewal-fee-each year-~~] Any licensed driller has thirty (30) [~~one--hundred--eighty~~ ~~{180}~~] days to comply with the regulations provided in this section [~~Section-14~~].

"Section 14 [~~15~~]. PLUGGING OF WATER WELLS. (a) It shall be the duty of each driller licensed [~~registered~~] under this Act to inform forthwith the landowner or person having a well drilled when water [~~is~~] injurious to vegetation, to land or to fresh water has been encountered and such well must be plugged or properly completed in order to avoid injury or pollution.

"(b) It shall be the duty of the driller [~~landowner--or person--having-a-well-drilled--upon-being-so-informed-~~] to see that such a well is forthwith plugged or completed under standards and procedures promulgated [~~set~~] by the department [~~Texas--Water Commission~~].

"(c) It shall be the duty of whoever shall plug such a well to complete a plugging report within thirty (30) days and submit it to the executive director [~~Commission~~]; appropriate forms shall be furnished by the executive director [~~Commission~~] upon request.

"Section 15 [~~17~~]. CONSTRUCTION. Nothing in this Act shall be construed as affecting the ownership, or the rights of owners of

1 the land, in underground water.

2 "Section 16 [~~18~~]. SEVERABILITY CLAUSE. If any provision of
3 this Act or the application thereof to any person or circumstance
4 is held invalid, such invalidity shall not affect other provisions
5 or applications of the Act which can be given effect without
6 defeating the purpose or objective of the provision, and to this
7 end, the provisions of this Act are declared to be severable.

8 "Section 17 [~~20~~]. TRANSFER OF FUNCTIONS. In the event that
9 the functions of the Texas Department of Water Resources [~~Water~~
10 ~~Commission~~] necessary to the proper implementation of its duties
11 under this Act are transferred to [~~the-Texas-Water-Development~~
12 ~~Board-or~~] any other agency, the authority given herein to the Texas
13 Department of Water Resources [~~Water---Commission~~] shall be
14 transferred to [~~the--Texas-Water-Development-Board-or~~] such other
15 agency."

16 SECTION 2. Each valid certificate of registration issued by
17 the board on or before September 1, 1981, continues in effect until
18 its regular expiration date.

19 SECTION 3. (a) Except for the ex officio members, incumbent
20 members of the board on the effective date of this Act serve the
21 remainder of their terms.

22 (b) The governor shall appoint one public member for a term
23 expiring on September 15, 1983, one public member for a term
24 expiring on September 15, 1985, and one public member for a term
25 expiring on September 15, 1987.

26 SECTION 4. This Act takes effect September 1, 1981.

27 SECTION 5. The importance of this legislation and the

1 crowded condition of the calendars in both houses create an
2 emergency and an imperative public necessity that the
3 constitutional rule requiring bills to be read on three several
4 days in each house be suspended, and this rule is hereby suspended.

HOUSE COMMITTEE REPORT

1ST PRINTING

F

By Traeger (Buchanan)

S.B. No. 915

Substitute the following for S.B. No. 915:

By Evans

C.S.S.B. No. 915

A BILL TO BE ENTITLED

AN ACT

relating to continuation of the functions of the Texas Water Well Drillers Board and regulation of water well drillers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Water Well Drillers Act, as amended (Article 7621e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. SHORT TITLE. This Act shall be known and may be cited as "The Water Well Drillers Act."

Sec. 2. DEFINITIONS. The following words and phrases as used in this Act shall have the following meanings unless a different meaning clearly appears from the context. The singular form shall also mean plural form and the masculine gender shall also include the feminine and neuter genders.

(a) "Person" shall mean any individual, whether or not connected with a firm, partnership, association, corporation, or any other group or combination acting as a unit.

~~[(b) -- "Commission" shall mean the Texas Water Commission or its successor.]~~

(b) [(e)] "Board" shall mean the Texas Water Well Drillers Board.

(c) "Executive director" shall mean the executive director of the Texas Department of Water Resources.

(d) "Department" shall mean the Texas Department of Water

1 Resources.

2 (e) [~~(d)~~] "Water well" shall mean any artificial excavation
3 constructed for the purpose of exploring for or producing ground
4 water. The term, however, shall not include any test or blast
5 holes in quarries or mines, or any well or excavation for the
6 purpose of exploring for, or producing oil, gas, or any other
7 minerals unless the holes are used to produce ground water.

8 (f) [~~(e)~~] "Water well driller" shall mean any person
9 (including owner, operator, and drilling supervisor) who engages
10 for compensation in the drilling, boring, coring, or construction
11 of any water well in this State. The term, however, shall not
12 include any person who drills, bores, cores, or constructs a water
13 well on his own property for his own use or a person who assists in
14 the construction of a water well under the direct supervision of a
15 licensed [~~registered~~] water well driller and is not primarily
16 responsible for the drilling operations.

17 (g) [~~(f)~~] "Licensed [~~Registered~~] water well driller" shall
18 mean any person who holds a license [~~certificate~~] issued by the
19 State of Texas pursuant to the provisions of this Act.

20 (h) [~~(g)~~] "Pollution" shall mean the changing of the
21 physical, thermal, chemical, or biological quality of, or the
22 contamination of, any water in a way that makes the water harmful
23 to humans, animal life, vegetation, or property or to the public
24 health, safety, or welfare or that impairs the usefulness or the
25 public enjoyment of the water for any lawful or reasonable purpose
26 [~~an-impairment-of-the-physical,-chemical,-or-biological--properties~~
27 ~~of--water-by-the-acts-or-instrumentalities-of-man-to-a-degree-which~~

1 ~~results-in-a-material-and-adverse-effect-upon--the--quality--as--to~~
2 ~~destroy-possible-consumptive-or-beneficial-use-of-such-waters~~].

3 (i) [~~h~~] "Well log" shall mean a log accurately kept, at
4 the time of drilling, showing the depth, thickness, character of
5 the different strata penetrated, location of water-bearing strata,
6 depth, size and character of casing installed, together with any
7 other data or information required by the Board, on forms
8 prescribed by the Board.

9 (j) [~~i~~] "Water Well Drillers Board" shall mean an
10 examining board consisting of nine (9) members, all [~~three-of-whom~~
11 ~~shall-be-ex-officie-nonvoting-members-and-six~~] of whom shall be
12 voting members appointed by the Governor with the advice and
13 consent of the Senate as hereinafter provided.

14 (k) [~~j~~] "License [~~Registration~~] fee" shall mean the
15 initial fee to be paid by a driller under this Act [~~which-shall-be,~~
16 ~~unless-otherwise-provided-herein,-\$25.00~~].

17 (l) [~~k~~] "Renewal fee" shall mean that fee paid by a
18 previously licensed [~~registered~~] driller [~~which-shall-be-\$25.00-per~~
19 ~~annum~~].

20 (m) [~~i~~] "Examination fee" shall mean that [~~\$10.00~~]
21 non-refundable fee required of each applicant for each examination.

22 Sec. 3. LICENSE [~~REGISTRATION~~] REQUIRED. (a) It shall be
23 unlawful for any person to act as or to offer to perform services
24 as a water well driller without first obtaining a license
25 [~~certificate-of-registration~~] in the manner prescribed herein and
26 pursuant to the rules of the Water Well Drillers Board.

27 (b) Applications shall contain the name of the applicant,

1 his business address, his permanent mailing address, and such other
2 relevant information as the Board may require.

3 (c) At the time of making application, each applicant shall
4 pay to the department [~~Commission~~] the required examination fee
5 which shall be non-refundable; and the successful candidates upon
6 notification of eligibility shall pay to the department
7 [~~Commission~~] the license [~~registration~~] fee.

8 (d) All licenses [~~certificates-of-registration~~] issued under
9 this Act shall expire on August 31 of each year; and on or before
10 that day, each person holding a license [~~certificate--of~~
11 ~~registration~~] shall pay to the department [~~Commission--the--sum--of~~
12 ~~\$25.00--as~~] an annual renewal fee. [~~Provided-further,-however,-any~~
13 ~~driller-who-allows-his-license-to-lapse-shall-be-given--a--one-year~~
14 ~~grace--period--in--which--to--renew--his--certificate-by-paying-the~~
15 ~~accrued-renewal-fee,--without--the--need--of--taking--the--drillers~~
16 ~~examination-~~] The department shall notify each licensee in writing
17 of the licensee's impending license expiration at least 30 days
18 before the expiration and shall attempt to obtain from each
19 licensee a signed statement confirming receipt of the notice. A
20 person may renew his unexpired license by paying to the department
21 before the expiration date of the license the required renewal fee.
22 If a person's license has been expired for 90 days or less, the
23 person may renew the license by paying to the department the
24 required renewal fee and a fee that is one-half of the examination
25 fee for the license. If a person's license has been expired for
26 more than 90 days but less than two years, the person may renew the
27 license by paying to the department all unpaid renewal fees and a

1 fee that is equal to the examination fee for the license. If a
 2 person's license has been expired for two years or more, the person
 3 may not renew the license. The person may obtain a new license by
 4 submitting to reexamination and complying with the requirements and
 5 procedures for obtaining an original license.

6 (e) The department shall maintain a current register of
 7 licensees.

8 (f) [(e)] A license [certificate-of-registration] shall not
 9 be transferable or assignable.

10 (g) [(f)] A duplicate license [certificate-of--registration]
 11 to replace a lost or destroyed license [certificate] shall be
 12 issued by the department [Commission] upon proper application and
 13 payment of a [\$1.00] fee.

14 [(g)--Any--water--well-driller-in-this-State-on-the-effective
 15 date-of-this-Act-shall-be-entitled-to-a-certificate-of-registration
 16 upon-the-filing-of-an-application-no-later-than--August--31--1966,
 17 and-the-payment-of-a-\$25.00-registration-or-renewal-fee.]

18 (h) The Board shall establish for the administration of this
 19 Act reasonable and necessary fees not exceeding the following
 20 amounts:

21	<u>1. Examination</u>	<u>\$ 25</u>
22	<u>2. License</u>	<u>100</u>
23	<u>3. Renewal</u>	<u>100</u>
24	<u>4. Duplicate License</u>	<u>10</u>

25 (i) The board shall not maintain unnecessary fund balances,
 26 and fee amounts shall be set in accordance with this requirement.

27 (j) [(h)] Each applicant shall have been a resident of the

1 State of Texas for not less than 90 days prior to making
2 application for a license [~~registration~~] as a water well driller.

3 Sec. 3A. LICENSES. The board by rule may adopt a system
4 under which licenses [~~certificates--of--registration~~] expire on
5 various dates during the year. For the year in which the license
6 [~~certification~~] expiration date is changed, license [~~certificate~~]
7 renewal fees payable on August 31 shall be prorated on a monthly
8 basis so that each license [~~certificate~~] holder shall pay only that
9 portion of the license [~~certification~~] renewal fee which is
10 allocable to the number of months during which the license
11 [~~certification~~] is valid. On renewal of the license
12 [~~certification~~] on the new expiration date, the total license
13 [~~certification~~] renewal fee is payable.

14 Sec. 4. ENDORSEMENT [~~RECIPROCITY~~]. The Board may develop
15 rules specifying grounds by which the department may waive any
16 license requirement for an applicant with a valid license from
17 another state having license requirements substantially equivalent
18 to those of this state [~~The-Commission, upon application--therefor~~
19 ~~and--upon--the--payment-of-the-proper-registration-fee, may issue a~~
20 ~~certificate-of-registration-as-a-registered-water-well--driller--to~~
21 ~~any-person-who-holds-a-certificate-of-qualification-or-registration~~
22 ~~issued--to--him--by--proper--authority-in-any-state-or-territory-or~~
23 ~~possession-of-the-United-States, or-of-any-ether--country,--if--the~~
24 ~~registration-standard-under-which-said-certificate-was-issued-is-of~~
25 ~~a--standard-not-lower-than-that-specified-by-the-provisions-of-this~~
26 ~~Act, and-the-rules-of-the-Water--Well--Drillers--Board--promulgated~~
27 ~~pursuant--to--the--provisions-hereof, and-if-that-particular-state,~~

territory, or possession of the United States, or country extends similar privileges to the persons registered under the provisions of this Act, provided, however, that before such applicant may be registered, he must show compliance with the residency requirements of Section 3, subsection (h) hereof. The Board shall keep the Commission informed of what states, territories, possessions, and countries fulfill these reciprocal requirements].

Sec. 5. REPORTING OF WELL LOGS. Every licensed [registered] water well driller drilling, deepening or otherwise altering a water well within this State shall make and keep, or cause to be made and kept, a legible and accurate well log, and within 30 [sixty-(60)] days from the completion or cessation of drilling, deepening or otherwise altering such a water well, shall deliver or transmit by certified mail a copy of such well log to the department [Commission], and the owner thereof or the person having had such well drilled. Each copy of a well log, other than a department copy, shall include the name, mailing address, and telephone number of the Board and the department. The well log required herein shall at the request in writing to the department [Commission], by certified mail, by the owner or the person having such well drilled be held as confidential matter and not made of public record.

Sec. 6. WATER WELL DRILLERS BOARD. (a) The Water Well Drillers Board shall be composed of nine (9) members appointed by the governor with the advice and consent of the Senate. [three--ex officio--and six appointed as follows, to-wit:] Appointments to the Board shall be made without regard to the race, creed, sex,

religion or national origin of the appointees.

[(a) -- One -- (1) -- member -- of -- the -- Board -- shall -- be -- the -- chairman -- of -- the -- Texas -- Water -- Commission -- or -- a -- representative -- from -- his -- staff -- appointed -- by -- him -- who -- shall -- be -- a -- nonvoting -- member -- and -- shall -- serve -- in -- an -- advisory -- capacity -- only; -- In -- the -- event -- that -- the -- functions -- of -- the -- Texas -- Water -- Commission -- are -- transferred -- to -- the -- Texas -- Water -- Development -- Board, -- then -- the -- member -- appointed -- hereby -- shall -- be -- the -- Executive -- Director -- of -- the -- Texas -- Water -- Development -- Board -- or -- a -- representative -- from -- his -- staff -- appointed -- by -- him.]

[(b) -- One -- (1) -- member -- shall -- be -- the -- Executive -- Secretary -- of -- the -- State -- Water -- Pollution -- Control -- Board -- or -- a -- representative -- from -- his -- staff -- appointed -- by -- him -- and -- shall -- also -- be -- a -- nonvoting -- member -- and -- shall -- serve -- in -- advisory -- capacity -- only.]

[(c) -- One -- (1) -- member -- shall -- be -- the -- chairman -- of -- the -- State -- Board -- of -- Health -- or -- a -- representative -- from -- his -- staff -- appointed -- by -- him -- and -- shall -- also -- be -- a -- nonvoting -- member -- and -- shall -- serve -- in -- an -- advisory -- capacity -- only.]

(b) [(d)] Six (6) members shall be water well drillers who have [appointed -- by -- the -- Governor -- with -- the -- advice -- and -- consent -- of -- the -- Senate, -- under] the following qualifications [conditions, -- to -- wit]:

(1) Each such driller shall be a citizen of the State of Texas.

(2) Each such driller shall have [a -- minimum -- of -- ten -- years] experience in the water well drilling business prior to his appointment.

(3) Each such driller shall be conversant in water well drilling, completion and plugging methods and techniques.

(4) Each such driller shall be a licensed [~~registered~~] water well driller.

(5) One driller shall be selected from the State at large and one of each such drillers shall be selected from the following geographic areas of the State of Texas:

A. Gulf Coast Area.

B. Trans-Pecos Area.

C. Central Texas Area.

D. North-East Texas Area.

E. Panhandle-South Plains Area.

(6) [~~e~~] It is further provided that no more than one (1) driller [~~Board~~] member may be employed by or own an interest in the same company, firm or business association which is engaged in any phase of the water well drilling business.

[~~(f)---The---first-six-(6)-Board-members-shall-be-appointed-for the-following-terms:---two-(2)-for-two-(2)-years,-two-(2)---for---four (4)-years,-and-two-(2)-for-six-(6)-years:-~~]

(c) Three (3) members must be representatives of the general public. A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of water well drilling; or

(2) is employed by, participates in the management of, or has, other than as a consumer, a financial interest in, a business entity or other organization related to the field of water well drilling.

(d) A Board member or an employee of the Board or the

department connected with the administration of this Act may not be an officer, employee, or paid consultant of a trade association in the water well drilling industry and may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry.

(e) A person who, because of his activities on behalf of a trade or professional association in the regulated profession, is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not serve as a member of the Board or act as the general counsel to the Board.

(f) It is a ground for removal from the Board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (b) or (c) of this section for appointment to the Board;

(2) does not maintain during the service on the Board the qualifications required by Subsection (b) or (c) of this section for appointment to the Board;

(3) violates a prohibition prescribed by Subsection (d) or (e) of this section; or

(4) fails to attend at least one-half of the regularly scheduled meetings held each year, excluding meetings held when the person was not a Board member.

(g) All terms shall expire on September 15 and all regular appointments shall be for terms of six (6) years.

~~(h) -- The -- initial -- appointments -- of -- the -- six -- (6) -- members -- shall~~

be-made-immediately-following-the-effective-date-of-this-Act.

[~~(i)~~--The-six--(6)--appointed--Board--members--shall--receive compensation-and-travel-allowance-as-the-Legislature-may-provide-in the-General-Appropriation-Act-]

(h) Each member of the Board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the general appropriations act.

(i) [~~(j)~~] The Board shall hold meetings [~~a--regular--annual meeting,--it-may-hold-special-meetings~~] at the call of the chairman [~~or-at-the-request-of-three--Board--members~~]. Meetings shall be conducted in compliance with Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes).

(j) [~~(k)~~] A majority of the Board is a quorum for conducting business.

(k) [~~(l)~~] The Board shall elect a chairman[~~--who-shall-be presiding-officer,--and-who-shall-not-vote-except-when--there--shall be--a--tie-vote,~~] by a majority vote at the first [regular] meeting each year. The board may recognize, prepare, or carry out continuing education programs for its licensees. Participation in the programs is voluntary.

(l) [~~(m)~~] The Board shall prepare [and--grade] examinations and pass upon qualifications of applicants for licenses and cause

1 to be issued licenses to those who qualify.

2 (m) [~~(n)~~] The Board shall design written examinations in
3 such a manner as to disqualify any person lacking in the necessary
4 knowledge of drilling, completion and plugging methods and
5 techniques and of ground water formations to the extent that the
6 performance by such person of services as a water well driller
7 would create a serious risk of polluting fresh water. Provided,
8 however, that each applicant shall have the right to have such
9 examination given him orally, in lieu of in writing.

10 [~~(e)--A--person--who--passes--the--examination--given--by--the--Board~~
11 ~~is--entitled--to--be--licensed--under--this--Act--~~]

12 (n) [~~(p)~~] Administration of examination:

13 (1) The department [~~Commission~~] shall offer examinations
14 prepared by the Board at least once a year and more frequently if
15 more than 10 persons petition the Board [~~Commission~~] for an
16 additional examination, or the Board should so provide.

17 (2) The examination shall be so administered so that the one
18 who grades an examination does not know whose paper he is grading.

19 (3) The department [~~Commission~~] shall maintain files of
20 examination papers. Not later than the 30th day after the date a
21 licensing examination is administered under this Act, the
22 department shall notify each examinee of the results of the
23 examination. A person, at any time within six months of the date
24 that he is notified of the results of an examination, is entitled
25 to inspect his examination paper during normal business hours at
26 the department's offices [~~Commission's-office~~] for the purpose of
27 challenging the propriety of the questions, the method of grading,

1 and the accuracy of grading. If requested in writing by a person
 2 who fails the licensing examination administered under this Act,
 3 the department shall furnish the person with an analysis of the
 4 person's performance on the examination.

5 [~~(4)~~--All-successful-applicants-who-pass-the-examination--may
 6 pay--the--\$25.00--registration--fee--to-the-Commission-and-obtain-a
 7 ~~drillers-registration-certificate.~~]

8 (o) [~~(g)~~] The person who fails an examination may apply for
 9 a subsequent examination, but must pay the examination
 10 [application] fee each time he applies. [~~He-may-not,--however,--be~~
 11 ~~counted--among-the-ten-(10)-applicants-necessary-to-petition-for-an~~
 12 ~~additional-examination.~~]

13 Sec. 6a. APPLICATION OF SUNSET ACT. The Texas Water Well
 14 Drillers Board is subject to the Texas Sunset Act, as amended
 15 (Article 5429k, Vernon's Texas Civil Statutes). Unless [~~7--and~~
 16 ~~unless~~] continued in existence as provided by that Act, the board
 17 is abolished, and this Act expires effective September 1, 1993
 18 [1981].

19 Sec. 7. RULES AND REGULATIONS. (a) The Board shall adopt,
 20 prescribe, promulgate, and enforce all rules and regulations
 21 reasonably necessary to effectuate the provisions of this Act,
 22 including all rules governing applications for a license
 23 [registration--certificates], qualifications of applicants, marking
 24 of water well drilling rigs and equipment, standards of conduct for
 25 licensed [~~registered~~] water well drillers and all rules governing
 26 procedure and practice before the Board. Be it further provided,
 27 however, that before the Board may adopt any substantive rule under

1 this Act, it must mail a copy of the proposed rule or amendment
 2 together with an informative summary of the rule or amendment to
 3 each person licensed under this Act, at least twenty (20) days
 4 prior to the proposed adoption [effective] date of such a proposed
 5 rule. ~~[The-procedural-rules-adopted-by-the-Board--shall--be--filed~~
 6 ~~with--the-Secretary-of-State-and-shall-become-effective-thirty-(30)~~
 7 ~~days-thereafter.]~~

8 (b) Full authority is given the Board to enforce by
 9 injunction or other appropriate remedy, in courts of competent
 10 jurisdiction, any and all reasonable rules, regulations, decisions,
 11 determinations and orders promulgated by it which do not conflict
 12 with any law. It shall be the duty of the Attorney General to
 13 represent the Board when requested to do so.

14 (c) The Board shall propose and adopt all rules in
 15 accordance with the Administrative Procedure and Texas Register
 16 Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).
 17 ~~[All--rules--and-regulations-proposed-to-be-adopted-and-promulgated~~
 18 ~~by-the-Board-shall-be-approved-in-writing-by-the--Attorney--General~~
 19 ~~and--placed--on--file--in--the-office-of-the-Secretary-of-State-for~~
 20 ~~public-inspection-for-at-least-thirty--(30)--days--prior--to--their~~
 21 ~~effective--date.---Any--changes,--alterations-or-revocations-of-such~~
 22 ~~rules-and-regulations-shall-be-likewise-approved-in-writing-by--the~~
 23 ~~Attorney--General--and--which--changes,--alterations-or-revocations~~
 24 ~~shall-be-filed-in-the-office-of-Secretary-of-State-prior--to--their~~
 25 ~~effective-date.]~~

26 Sec. 8. REVOCATION OF LICENSES [CERTIFICATES---OF
 27 REGISTRATION]. (a) The Board shall revoke or suspend a license,

1 place on probation a person whose license has been suspended, or
 2 reprimand a licensee for a violation of this Act or a rule adopted
 3 by the Board under this Act [~~certificate-of-registration-of-any~~
 4 ~~registered-water-well-driller-who-violates-any-provision-of-this~~
 5 ~~Act--or-any-substantive-rule-or-regulation-of-the-Board-promulgated~~
 6 ~~under-the-authority-of-this-Act-may-be-revoked-or-suspended-by--the~~
 7 ~~Board~~]. Grounds for revocation, [~~or~~] suspension, probation, or
 8 reprimand [~~of-a-driller's-certificate~~] shall include intentional
 9 misstatement or misrepresentation of fact on an application or well
 10 log; failure to keep and transmit water well logs as provided
 11 herein; failure to advise a person for whom a well is being drilled
 12 that injurious water has been encountered, is a pollution hazard,
 13 and must be forthwith plugged in an acceptable manner; or being
 14 found to be an incompetent water well driller.

15 (b) The Board shall, before suspending or revoking any
 16 license [~~certificate---of--registration~~], placing a person on
 17 probation, or reprimanding a licensee, notify the holder in writing
 18 of any charges [~~changes~~] made in order to afford such holder an
 19 opportunity to be heard, which notification shall be given at least
 20 ten (10) days prior to the date set for hearing, and which shall
 21 prescribe the time and place of the hearing. Such written notice
 22 may be served by mailing same by registered mail to the last known
 23 business address of such person. At such hearing such person and
 24 all persons complaining against him, as well as any other witness
 25 whose testimony is relied upon to substantiate the charges made,
 26 shall be entitled to be present. He shall also be entitled to
 27 present evidence, oral and written as may be relevant to the

1 inquiry. In such hearing all witnesses shall be duly sworn and a
2 record of the proceedings shall be taken. Any party to the
3 proceedings desiring it shall be furnished with a copy of the
4 record upon the payment to the Board of a fee not to exceed fifty
5 cents (50¢) per page.

6 (c) Every decision and order in a disciplinary [~~revocation~~
7 ~~or--suspension~~] hearing rendered by the Board shall be in writing
8 and shall set forth briefly the findings of fact and Board's
9 conclusions. Parties to the proceedings shall be notified of the
10 decision or order in person or by mail and forwarded a copy of
11 same; such orders or decisions shall be transmitted no later than
12 thirty (30) days of conclusion of the hearing.

13 Sec. 9. APPEAL OF BOARD ACTION. (a) A person affected by
14 any ruling, order, decision, or other act of the Board may appeal
15 by filing a petition in a District Court in the county in which the
16 alleged violation occurred.

17 (b) Petition must be filed within thirty (30) days after the
18 date of the Board's action, or, in case of a ruling, order, or
19 decision, within thirty (30) days after its effective date.

20 (c) Service of citation on the Board must be accomplished
21 within thirty (30) days after the date the petition was filed.
22 Citation may be served on the Executive Director of the department
23 [~~Water-Development-Board~~] or on any member of the Water Well
24 Drillers Board.

25 (d) The plaintiff shall pursue his action with reasonable
26 diligence. .

27 (e) The substantial evidence rule applies in the judicial

1 review of any Board action, ruling, order, or decision [~~Any ruling~~
 2 ~~of the Board may be appealed in the same manner as appeals from the~~
 3 ~~justice--court--to--the--county--court~~]. All administrative or
 4 executive action taken prior to the filing of the suit shall
 5 continue in force and effect until the rights of the parties
 6 thereto shall be determined by the court upon a trial of the
 7 matters in controversy.

8 Sec. 10. DUTIES OF THE DEPARTMENT [~~COMMISSION~~]. (a) The
 9 department [~~Commission~~] shall furnish the Board with necessary
 10 clerical [~~administrative~~] services, including space for holding
 11 examinations; [~~preparing--examinations;~~] printing examinations;
 12 printing and mailing licenses; sending notices[~~7--before-August-1-of~~
 13 ~~each-year-that--license--must--be--renewed~~]; collecting fees and
 14 issuing receipts; [~~keeping--a--current--register--of--licensees;~~]
 15 employing secretarial assistance; replying to routine requests for
 16 information; printing forms and information; typing all letters to
 17 be reproduced; maintaining records and completed examinations; and
 18 keeping records of receipts and disbursements; providing necessary
 19 legal services; and providing necessary investigative services, and
 20 the department [~~Commission~~] shall promulgate procedures and
 21 standards for plugging water wells [~~under-Section-15-of-this-Act~~].

22 (b) The Board shall have access to information kept by the
 23 department [~~Commission~~] under this Act.

24 (c) The department [~~Commission~~] shall adopt the necessary
 25 procedural rules in order to carry out the imposed duties under
 26 this Section of this Act.

27 (d) The department shall prepare information of consumer

1 interest describing the regulatory functions of the Board and the
 2 Board's procedures by which consumer complaints are filed with and
 3 resolved by the Board. The department shall make the information
 4 available to the general public and appropriate state agencies.
 5 [Full-authority-is-given-the-Commission-to-enforce-by-injunction-or
 6 other--appropriate-remedy,-in-courts-of-competent-jurisdiction,-any
 7 and-all-rules,-regulations,-decisions,-determinations--and--orders
 8 promulgated-by-it-which-do-not-conflict-with-any-law.]

9 (e) If a written complaint is filed with the Board relating
 10 to a licensee, the department, at least as frequently as quarterly,
 11 shall notify the parties to the complaint of the status of the
 12 complaint until final disposition unless the notice would
 13 jeopardize an undercover investigation. The department shall
 14 maintain an information file about each complaint filed with the
 15 Board relating to a licensee.

16 [See-11--EXCEPTION--OF--DROUGHT--DISASTER--AREAS----Upon
 17 petition--of-the-commissioners-court-of-any-county-the-Governor-may
 18 proclaim-the-county-a--drought--disaster--area---If--the--Governor
 19 issues-the-proclamation-that-the-county-is-a-drought-disaster-area,
 20 the-terms-and-provisions-of-this-Act-are-suspended-in-such-a-county
 21 for--the--length--of--time--specified--in--the-proclamation,-except
 22 insofar-as-said-Act-applies-to-the-plugging-of-water-wells.]

23 Sec. 11 [12]. DISPOSITION OF REVENUES. (a) The state
 24 auditor shall audit the financial transactions of the Board and
 25 department in connection with the administration of this Act during
 26 each fiscal biennium.

27 (b) All money collected by the department [Commission] under

1 the provisions of this Act shall be deposited in the state treasury
 2 to the credit of a special fund to be known as the water well
 3 drillers fund and may be used only to administer this Act [~~placed~~
 4 ~~in-the-General-Revenue-Fund~~].

5 (c) On or before January 1 of each year, the department
 6 shall submit in writing to the governor and the presiding officer
 7 of each house of the legislature a complete and detailed report
 8 accounting for funds received and disbursed under this Act by the
 9 department and the Board during the preceding year.

10 Sec. 12 [~~13~~]. CIVIL PENALTY. Any person who fails to comply
 11 with the provisions of this Act, or with any rule or regulation
 12 promulgated by the board or the department [~~commission~~] under this
 13 Act, [~~or-with-any-term,-condition-or-provision-in-his-permit-issued~~
 14 ~~pursuant-to-this-Act,~~] shall be subject to a civil penalty in any
 15 sum not exceeding One Thousand Dollars (\$1,000) for each day of
 16 noncompliance and for each act of noncompliance, as the court may
 17 deem proper. A firm, partnership, association, corporation, or
 18 other group or combination with which the person was connected in
 19 relation to the act of noncompliance is also subject to the civil
 20 penalty. The action may be brought by the board [~~or--the~~
 21 ~~commission,-as-appropriate,~~] in any court of competent jurisdiction
 22 in the county where the offending activity is occurring or where
 23 the defendant resides. Full authority is also given the executive
 24 director [~~board--or--commission,-as-appropriate,~~] to enforce by
 25 injunction, mandatory injunction or other appropriate remedy, in
 26 courts having jurisdiction in the county where the offending
 27 activity is occurring, [~~any--and--all---reasonable---rules---and~~

1 ~~regulations--promulgated--by-it-which-do-not-conflict-with-any-law,~~
 2 ~~and-all-of-the-terms,-conditions-and-provisions-of--permits--issued~~
 3 ~~by-the-board-or-commission-pursuant-to]~~ the provisions of this Act.
 4 At the request of the board or the executive director [~~commission~~],
 5 the Attorney General shall institute and conduct a suit in the name
 6 of the State of Texas for injunctive relief or to recover the civil
 7 penalty, or for both the injunctive relief and civil penalty,
 8 authorized in this section. Any party to a suit may appeal from a
 9 final judgment as in other civil cases. The obtaining of a license
 10 [~~permit~~] under the provisions of this Act by a person shall not act
 11 to relieve that person from liability under any statutory law or
 12 the Common Law.

13 Sec. 13 [~~14~~]. MARKING RIGS WITH IDENTIFICATION NUMBER. It
 14 is the duty of all licensed [~~registered~~] water well drillers to see
 15 that all rigs used by them or their employees in the water well
 16 drilling business are marked with legible identification numbers at
 17 all times; the "identification number" to be used on the rigs shall
 18 be the "license number" which appears on the driller's license
 19 [~~registration--certificate~~]; the Board shall set out in detail in
 20 its rules the specific method and manner for marking the rigs.
 21 [~~The--driller--shall-furnish-a-sworn-statement-that-he-has-complied~~
 22 ~~with-this-provision-of-the-Act-with-his--annual--renewal--fee--each~~
 23 ~~year-~~] Any licensed driller has (30) [~~one-hundred-eighty-(180)~~]
 24 days to comply with the regulations provided in this section
 25 [~~Section-14~~].

26 Sec. 14 [~~15~~]. PLUGGING OF WATER WELLS. (a) It shall be the
 27 duty of each driller licensed [~~registered~~] under this Act to inform

1 forthwith the landowner or person having a well drilled when water
2 [~~is~~] injurious to vegetation, to land or to fresh water has been
3 encountered and such well must be plugged or properly completed in
4 order to avoid injury or pollution.

5 (b) It shall be the duty of the driller [~~landowner-or-person~~
6 ~~having-a-well-drilled,-upon-being-so-informed,-~~] to see that such a
7 well is forthwith plugged or completed under standards and
8 procedures promulgated [~~set~~] by the department [~~Texas---Water~~
9 ~~Commission~~].

10 (c) It shall be the duty of whoever shall plug such a well
11 to complete a plugging report within thirty (30) days and submit it
12 to the executive director [~~Commission~~]; appropriate forms shall be
13 furnished by the executive director [~~Commission~~] upon request.

14 Sec. 15 [~~17~~]. CONSTRUCTION. Nothing in this Act shall be
15 construed as affecting the ownership, or the rights of owners of
16 the land, in underground water.

17 Sec. 16 [~~18~~]. SEVERABILITY CLAUSE. If any provision of this
18 Act or the application thereof to any person or circumstance is
19 held invalid, such invalidity shall not affect other provisions or
20 applications of the Act which can be given effect without defeating
21 the purpose or objective of the provision, and to this end, the
22 provisions of this Act are declared to be severable.

23 Sec. 17 [~~20~~]. TRANSFER OF FUNCTIONS. In the event that the
24 functions of the Texas Department of Water Resources [~~Water~~
25 ~~Commission~~] necessary to the proper implementation of its duties
26 under this Act are transferred to [~~the-Texas-Water-Development~~
27 ~~Board-or~~] any other agency, the authority given herein to the Texas

1 Department of Water Resources [~~Water---Commission~~] shall be
2 transferred to [~~the--Texas-Water-Development-Board-or~~] such other
3 agency.

4 SECTION 2. Each valid certificate of registration issued by
5 the board on or before September 1, 1981, continues in effect until
6 its regular expiration date.

7 SECTION 3. (a) Except for the ex officio members, incumbent
8 members of the board on the effective date of this Act serve the
9 remainder of their terms.

10 (b) The governor shall appoint one public member for a term
11 expiring on September 15, 1983, one public member for a term
12 expiring on September 15, 1985, and one public member for a term
13 expiring on September 15, 1987.

14 SECTION 4. This Act takes effect September 1, 1981.

15 SECTION 5. The importance of this legislation and the
16 crowded condition of the calendars in both houses create an
17 emergency and an imperative public necessity that the
18 constitutional rule requiring bills to be read on three several
19 days in each house be suspended, and this rule is hereby suspended.

COMMITTEE REPORT

The Honorable Bill Clayton
Speaker of the House of Representatives

May 11, 1981
(date)

Sir:

We, your COMMITTEE ON GOVERNMENT ORGANIZATION, to whom was referred SB 915, have had the same under consideration and beg to report back with the recommendation that it (measure)

- () do pass, without amendment.
() do pass, with amendment(s).
(X) do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

A fiscal note was requested. (X) yes () no

An author's fiscal statement was requested. () yes (X) no

An actuarial analysis was requested. () yes (X) no

The Committee recommends that this measure be placed on the ~~House~~ or ~~General~~ Calendar.

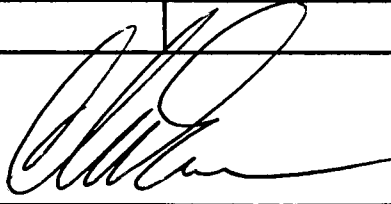
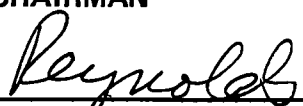
This measure (X) proposes new law.
(X) amends existing law.

House Sponsor of Senate Measure Buchanan

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Evans, Ch.			C	
Collazo, V.C.				X
Thompson, G., C.B.O.	X			
Bomer				X
Cary	X			
Gonzales	X			
Henderson				X
Hinojosa	X			
Keese	X			
Staniswalis	X			
Tow	X			

Total
7 aye
0 nay
1 present, not voting
3 absent


CHAIRMAN

COMMITTEE COORDINATOR

BILL ANALYSIS

Background Information

The state founded the Texas Board of Water Engineers in 1913, as a non-regulatory body whose primary function was the logging of ground water data. In 1961, the 57th Legislature created the Water Well Drillers Board as an advisory board to the Board of Water Engineers. The Board of Water Engineers was granted regulatory power to insure that water well drillers register annually and submit logs of wells within 60 days of completion.

By 1965, the ineffectiveness of previous legislation controlling well standards, the increased concern of consumers, the inadequate submission of logs by drillers, and the driller's feelings of non-participation in the regulation of their own industry caused the 59th Legislature to establish the Board of Water Well Drillers as a regulatory board with administrative functions performed by the Water Commission, the successor to the Board of Water Engineers.

The new Board of Water Well Drillers was charged with establishing minimum qualifications for drillers, standards of conduct, and licensing examinations and hearings.

Since 1965, the only significant changes in the law have been the replacement of the Water Commission by the Water Development Board, and subsequently the Department of Water Resources, all of which carry out the administrative functions for the Board of Water Well Drillers.

Purpose

To maintain the Board of Water Well Drillers as a regulatory board still dependent on the Department of Water Resources for administrative assistance. Also, this legislation proposes: 1) clearer definitions of wells and pollution standards; 2) more precise licensing procedures; 3) revenue collecting procedures for the Board; 4) allowing all nine board members to vote; and 5) a per diem allowance for board members.

Section by Section Analysis

SECTION 1. Amends eighteen (18) Sections of Article 7621e, Vernon's Texas Civil Statutes, as follows:

Section 2. Provides definitions and clarifies that the Board's functions are administered by the Texas Department of Water Resources. The Act expands the definition of "water well," to include holes from the mining of minerals, later used to produce water, and requires that drillers must be licensed instead of registered. Also, a more precise definition of pollution is added to describe thermal quality as a potential contaminant. Subsection 2 allows all nine members of the Board to vote as opposed to just six members voting and two ex-officio non-voting.

Section 3. Establishes the change over from registration of drillers to a licensing program which is managed by the Department of Water Resources, and the right of the Board to charge reasonable fees for the licensing program, and sets out delinquent renewal requirements.

Section 3A. Establishes a system of staggered license renewal and prorated fees.

Section 4. Allows the Board to waive licensing requirements for an out of state applicant licensed by another state whose requirements are equivalent to those of Texas.

Section 5. Demands that drillers deliver to the Department of Water Resources a log of a well within 30 days of the well's completion.

Section 6. Allows the governor to appoint the nine member board regardless of race, creed, sex, religion, or national origin, and outlines the qualifications of

the board members. It removes the requirement that one board member be designated as the Executive Secretary. This section specifically states the eligibility requirements of the three board members representative of the general public, as well as grounds for removal of a board member. In addition, a per diem allowance set by the Legislature is authorized. Instead of an annual meeting, the Board may call a meeting at any time in compliance with the Open Meetings Act and Texas Register Act. Also, the Board may create a voluntary continuing education program. Under this Section, the Department of Water Resources shall administer the examinations at least once a year and notify the applicants of the results within 30 days. Also, the Department of Water Resources shall provide an analysis of an applicant's performance on the exam. Existing procedures allow an examinee to inspect his or her paper during normal business hours at the Department's offices for the purpose of challenging the propriety of the questions, the method of grading, and the accuracy of grading.

Section 6a. Declares the Texas Water Well Drillers Board is subject to the Sunset Act in 1993.

Section 7. Outlines the existing rules and regulations by which the Board may govern this Act in accordance with the Administrative Procedure and Texas Register Act.

Section 8. Describes the process by which a license may be revoked under the agency's full range of powers.

Section 9. Describes the process of appealing a Board decision according to the substantial evidence rule.

Section 10. Describes the administrative functions which the Department of Water Resources shall furnish to the Board of Water Well Drillers as well as providing public information and the status of complaints.

Section 11. Places the money collected by the Department in the State Treasury in the Water Well Drillers Fund. The state auditor shall audit the Board's transactions each fiscal biennium. The Board shall also annually report to the governor and the legislature all receipts and disbursements.

Section 12. States the penal provisions for violation of this Act, a fine not exceeding \$1,000.00 per day of non-compliance. Also, this section lists the state agencies whose authority may be used on behalf of the Board.

Section 13. Deals with marking rigs with identification numbers from the driller's license as described by the rules of the Board. A licensed driller has 30 days to comply with rig marking regulations.

Section 14. Describes the duties of a driller to plug or properly complete an injurious well, the duties of a landowner to see an injurious well plugged or completed, and the duties of whoever plugs an injurious well to file a plugging report within 30 days of completion.

Section 15. States that this Act does not affect the ownership or rights of landowners concerning underground water.

Section 16. Declares a severability clause that one provision of this Act declared invalid does not affect the other provisions of this Act.

Section 17. Notes that if the functions of the Department of Water Resources are transferred, then the subsequent agency is empowered with the Department's functions.

SECTION 2. All previous registration certificates issued before September 1, 1981 are in effect until their respective expiration dates.

SECTION 3. All incumbent board members, excluding ex-officio members, shall serve out their terms. The governor shall appoint the three public members on September 15, 1983, 1985, and 1987 respectively.

SECTION 4. Effective date.

SECTION 5. Emergency clause.

Rulemaking Authority

Additional rulemaking authority given to the Board includes the establishment of fees necessary to administer this Act, as well as the development of rules by which requirements for a licensee may be waived if the licensee is licensed by another state with equivalent requirements for drillers.

Rulemaking authority is the same concerning the changeover of the Water Well Drillers Board from a registering agency to a licensing agency, allowing the Executive Secretary to carry out the Board's requirements.

Substantial Differences S.B. 915 and C.S.S.B. 915

The major difference between S.B. 915 and C.S.S.B. 915 is the incorporation of several sunset measures including a staggered license renewal system, non-discriminatory board appointments, grounds for removal from the board, compliance with Open Meetings and Texas Register Act, continuing education programs, prompt return of examination results and analysis of applicant's performance, state audit, public information files, status reports on complaints, and an annual report to the governor and legislature.

Summary of Committee Action

S.B. 915 and H.B. 1547 are companion bills.

Public notice was posted in accordance with Rule 3.084, Rules of Procedure of the House of Representatives, and a public hearing was held on H.B. 1547 on Wednesday, April 1, 1981.

The bill (H.B. 1547) was referred to a subcommittee consisting of the following members: Representatives Don Henderson, Reby Cary, Arnold Gonzales, Juan Hinojosa, and Chip Staniswalis. On Thursday, April 30, 1981, the measure was reported to the full committee with a substitute.

On Monday, May 11, 1981, the full committee voted to substitute S.B. 915 for H.B. 1547, and then voted to report S.B. 915 to the House with a substitute and the recommendation that it do pass by a record vote of seven ayes, no nays, and one present not voting.

The following persons testified in favor of H.B. 1547:

Bill Waddle, representing the Texas Water Conservation Association
Gary Grant, representing himself

The following person testified in opposition to H.B. 1547:

Don McKinley, representing himself

LEGISLATIVE BUDGET BOARD

Austin, Texas

MAY 8 1981

FISCAL NOTE

May 8, 1981

Honorable Charles W. Evans, Chairman
Committee on Government Organization
House of Representatives
Austin, Texas

In Re: Senate Bill No. 915, as engrossed
By: Traeger

Sir:

In response to your request pursuant to House Rules, Section 3.119, this office finds the fiscal implications of the Senate Bill No. 915, as engrossed (relating to continuation of the functions of the Texas Water Well Drillers Board and regulation of water well drillers) to be as follows:

The bill would make no appropriation but could provide the legal basis for a request for funds to implement the provisions of the bill.

The Texas Water Well Drillers Board is subject to the provisions of the Texas Sunset Act, and unless continued in existence by the Legislature, will be abolished effective September 1, 1981.

The bill, should it be enacted, would continue the existence of the Texas Water Well Drillers Board and increase the number of Board members from six to nine.

The bill would also give board members the authority to set fees related to water well drillers at a level sufficient to cover the cost of their regulation.

The amount set forth for this agency in the General appropriations Bill, as introduced (FY 1982-\$9,000; FY 1983-\$9,000), would be contingent, if approved, upon passage of Senate Bill No. 915 or similar legislation. The appropriations would be financed from the General Revenue Fund and are only for travel and per diem of board members.

Currently, all administrative services to the board are provided by the Department of Water Resources and paid from the General Revenue Fund appropriations to the Department. In fiscal year 1980 the cost to the Department of providing these services was approximately \$80,000, and amounts adequate to continue this support are included in the General Appropriations Bill for fiscal years 1982 and 1983.


In addition to the recommended appropriations, the probable fiscal implication of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

<u>Fiscal Year</u>	<u>Probable Cost Out of The General Revenue Fund</u>
1982	\$ 4,500
1983	4,500
1984	4,500
1985	4,500
1986	4,500

Fiscal Note for the Committee Substitute
for Senate Bill No. 915
May 8, 1981
Page Two

The financial implications of the bill in future years may reasonably be expected to approximate the recommended appropriation amounts, plus the additional costs as shown above, but would in fact depend upon future decisions of the Texas Legislature.

No fiscal implication or additional cost to units of local government attributable to the bill, should it be enacted, is anticipated.


Thomas M. Keel
Director

Source: Department of Water Resources; LBB Staff: TK, JH, EB

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

MAY 14 1981

May 14, 1981

Honorable Charles W. Evans, Chairman
Committee on Government Organization
House of Representatives
Austin, Texas

In Re: Committee Substitute for
Senate Bill No. 915
By: Traeger

Sir:

In response to your request pursuant to House Rules, Section 3.119, this office finds the fiscal implications of the Committee Substitute for Senate Bill No. 915 (relating to continuation of the functions of the Texas Water Well Drillers Board and regulation of water well drillers) to be as follows:

The bill would make no appropriation but could provide the legal basis for a request for funds to implement the provisions of the bill.

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Currently, all administrative services to the board are provided by the Department of Water Resources and paid from the General Revenue Fund appropriations to the Department. In fiscal year 1980 the cost to the Department of providing these services was approximately \$80,000, and amounts adequate to continue this support are included in the General Appropriations Bill for fiscal years 1982 and 1983.


In addition to the recommended appropriations, the probable fiscal implication of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Probable Cost Out of the General Revenue Fund	
1982	\$	4,500
1983		4,500
1984		4,500
1985		4,500
1986		4,500

Fiscal Note for Committee Substitute for Senate Bill No. 915
Page Two
May 14, 1981

The financial implications of the bill in future years may reasonably be expected to approximate the recommended appropriation amounts, plus the additional costs as shown above, but would in fact depend upon future decisions of the Texas Legislature.

No fiscal implication or additional cost to units of local government attributable to the bill, should it be enacted, is anticipated.


Thomas M. Keel
Director

Source: Department of Water Resources; LBB Staff: TK, JH, PA

ADOPTED

MAY 22 1981

Betty Murray
Chief Clerk
House of Representatives

3R ce

By: Traeger

S.B. No. 915

Substitute the following for S.B. 915:

By: Evans

C.S.S.B. No. 915

A BILL TO BE ENTITLED

AN ACT

relating to continuation of the functions of the Texas Water Well Drillers Board and regulation of water well drillers; *amending the Water Well Drillers Act, as amended (Article 7621e, Vernon's Texas Civil Statutes)*
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Water Well Drillers Act, as amended (Article 7621e, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 1. SHORT TITLE. This Act shall be known and may be cited as 'The Water Well Drillers Act.'"

"Section 2. DEFINITIONS. The following words and phrases as used in this Act shall have the following meanings unless a different meaning clearly appears from the context. The singular form shall also mean plural form and the masculine gender shall also include the feminine and neuter genders.

"(a) 'Person' shall mean any individual, whether or not connected with a firm, partnership, association, corporation, or any other group or combination acting as a unit.

"[(b) -- 'Commission' -- shall mean the Texas Water -- Commission -- or its successor.]

"(b) [(c)] 'Board' shall mean the Texas Water Well Drillers Board.

"(c) 'Executive director' shall mean the executive director of the Texas Department of Water Resources.

"(d) 'Department' shall mean the Texas Department of Water

House Substitute

5/26/81

1 Resources.

2 “(e) [(d)] “Water well” shall mean any artificial excavation
3 constructed for the purpose of exploring for or producing ground
4 water. The term, however, shall not include any test or blast
5 holes in quarries or mines, or any well or excavation for the
6 purpose of exploring for, or producing oil, gas, or any other
7 minerals unless the holes are used to produce ground water.

8 “(f) [(e)] “Water well driller” shall mean any person
9 (including owner, operator, and drilling supervisor) who engages
10 for compensation in the drilling, boring, coring, or construction
11 of any water well in this State. The term, however, shall not
12 include any person who drills, bores, cores, or constructs a water
13 well on his own property for his own use or a person who assists in
14 the construction of a water well under the direct supervision of a
15 licensed [~~registered~~] water well driller and is not primarily
16 responsible for the drilling operations.

17 “(g) [(f)] “Licensed [~~Registered~~] water well driller” shall
18 mean any person who holds a license [~~certificate~~] issued by the
19 State of Texas pursuant to the provisions of this Act.

20 “(h) [(g)] “Pollution” shall mean the changing of the
21 physical, thermal, chemical, or biological quality of, or the
22 contamination of, any water in a way that makes the water harmful
23 to humans, animal life, vegetation, or property or to the public
24 health, safety, or welfare or that impairs the usefulness or the
25 public enjoyment of the water for any lawful or reasonable purpose
26 [~~an-impairment-of-the-physical,-chemical,-or-biological--properties~~
27 ~~of--water-by-the-acts-or-instrumentalities-of-man-to-a-degree-which~~]

1. results-in-a-material-and-adverse-effect-upon--the--quality--as--to
2. destroy-possible-consumptive-or-beneficial-use-of-such-waters].

3. "(i) [(h)] "Well log" shall mean a log accurately kept, at
4. the time of drilling, showing the depth, thickness, character of
5. the different strata penetrated, location of water-bearing strata,
6. depth, size and character of casing installed, together with any
7. other data or information required by the Board, on forms
8. prescribed by the Board.

9. "(j) [(i)] "Water Well Drillers Board" shall mean an
10. examining board consisting of nine (9) members, all [three-of-whom
11. shall-be-ex-officio-nonvoting-members-and-six] of whom shall be
12. voting members appointed by the Governor with the advice and
13. consent of the Senate as hereinafter provided.

14. "(k) [(j)] "License [Registration] fee" shall mean the
15. initial fee to be paid by a driller under this Act [which-shall-be,
16. unless-otherwise-provided-herein, \$25.00].

17. "(l) [(k)] "Renewal fee" shall mean that fee paid by a
18. previously licensed [registered] driller [which-shall-be-\$25.00-per
19. annum].

20. "(m) [(l)] "Examination fee" shall mean that [\$10.00]
21. non-refundable fee required of each applicant for each examination.

22. "Sec¹⁶ 3. LICENSE [REGISTRATION] REQUIRED. (a) It shall be
23. unlawful for any person to act as or to offer to perform services
24. as a water well driller without first obtaining a license
25. [certificate-of-registration] in the manner prescribed herein and
26. pursuant to the rules of the Water Well Drillers Board.

27. "(b) Applications shall contain the name of the applicant, 3

1 his business address, his permanent mailing address, and such other
2 relevant information as the Board may require.

3 “(c) At the time of making application, each applicant shall
4 pay to the department [~~Commission~~] the required examination fee
5 which shall be non-refundable; and the successful candidates upon
6 notification of eligibility shall pay to the department
7 [~~Commission~~] the license [~~registration~~] fee.

8 “(d) All licenses [~~certificates-of-registration~~] issued under
9 this Act shall expire on August 31 of each year; and on or before
10 that day, each person holding a license [~~certificate--of~~
11 ~~registration~~] shall pay to the department [~~Commission--the--sum--of~~
12 ~~\$25.00--as~~] an annual renewal fee. [~~Provided-further,--however,--any~~
13 ~~driller-who-allows-his-license-to-lapse-shall-be-given--a--one-year~~
14 ~~grace--period--in--which--to--renew--his--certificate-by-paying-the~~
15 ~~accrued-renewal-fee,--without--the--need--of--taking--the--drillers~~
16 ~~examination.~~] The department shall notify each licensee in writing

17 of the licensee's impending license expiration at least 30 days
18 before the expiration and shall attempt to obtain from each
19 licensee a signed statement confirming receipt of the notice. A
20 person may renew his unexpired license by paying to the department
21 before the expiration date of the license the required renewal fee.

22 If a person's license has been expired for 90 days or less, the
23 person may renew the license by paying to the department the
24 required renewal fee and a fee that is one-half of the examination
25 fee for the license. If a person's license has been expired for
26 more than 90 days but less than two years, the person may renew the
27 license by paying to the department all unpaid renewal fees and a

fee that is equal to the examination fee for the license. If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

"(e) The department shall maintain a current register of licensees.

"(f) [(e)] A license [certificate-of-registration] shall not be transferable or assignable.

"(g) [(f)] A duplicate license [certificate-of--registration] to replace a lost or destroyed license [certificate] shall be issued by the department [Commission] upon proper application and payment of a [\$25.00] fee.

"[(g)--Any--water--well--driller--in--this--State--on--the--effective date--of--this--Act--shall--be--entitled--to--a--certificate--of--registration upon--the--filing--of--an--application--no--later--than--August--31,--1966, and--the--payment--of--a--\$25.00--registration--or--renewal--fee.]

"(h) The Board shall establish for the administration of this Act reasonable and necessary fees not exceeding the following amounts:

<u>"1. Examination</u>	<u>\$ 25</u>
<u>"2. License</u>	<u>100</u>
<u>"3. Renewal</u>	<u>100</u>
<u>"4. Duplicate License</u>	<u>10</u>

"(i) The board shall not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement.

"(j) [(h)] Each applicant shall have been a resident of the State of Texas for not less than 90 days prior to making application for a license [registration] as a water well driller.

1 "Section 3A. LICENSES. The board by rule may adopt a system
2 under which licenses [~~certificates--of--registration~~] expire on
3 various dates during the year. For the year in which the license
4 [~~certification~~] expiration date is changed, license [~~certificate~~]
5 renewal fees payable on August 31 shall be prorated on a monthly
6 basis so that each license [~~certificate~~] holder shall pay only that
7 portion of the license [~~certification~~] renewal fee which is
8 allocable to the number of months during which the license
9 [~~certification~~] is valid. On renewal of the license
10 [~~certification~~] on the new expiration date, the total license
11 [~~certification~~] renewal fee is payable.

12 "Section 4. ENDORSEMENT [RECIPROCITY]. The Board may develop
13 rules specifying grounds by which the department may waive any
14 license requirement for an applicant with a valid license from
15 another state having license requirements substantially equivalent
16 to those of this State [~~The Commission, upon application--therefor~~
17 ~~and--upon--the--payment-of-the-proper-registration-fee, may issue a~~
18 ~~certificate-of-registration-as-a-registered-water-well--driller--to~~
19 ~~any-person-who-holds-a-certificate-of-qualification-or-registration~~
20 ~~issued--to--him--by--proper--authority-in-any-state-or-territory-or~~
21 ~~possession-of-the-United-States,--or-of-any-other--country,--if--the~~
22 ~~registration-standard-under-which-said-certificate-was-issued-is-of~~
23 ~~a--standard-not-lower-than-that-specified-by-the-provisions-of-this~~
24 ~~Act,--and-the-rules-of-the-Water--Well--Drillers--Board--promulgated~~
25 ~~pursuant--to--the--provisions-hereof,--and-if-that-particular-state,~~
26 ~~territory,--or-possession-of-the-United-States,--or--country--extends~~
27 ~~similar--privileges--to-the-persons-registered-under-the-provisions~~

1 of this Act, provided, however, that before such applicant may be
2 registered, he must show compliance with the residency requirements
3 of Section 3, subsection (h) hereof. The Board shall keep the
4 Commission informed of what states, territories, possessions, and
5 countries fulfill these reciprocal requirements].

6 Section 5. REPORTING OF WELL LOGS. Every licensed [registered]
7 water well driller drilling, deepening or otherwise altering a
8 water well within this State shall make and keep, or cause to be
9 made and kept, a legible and accurate well log, and within 30
10 [sixty-(60)] days from the completion or cessation of drilling,
11 deepening or otherwise altering such a water well, shall deliver or
12 transmit by certified mail a copy of such well log to the
13 department [Commission], and the owner thereof or the person having
14 had such well drilled. Each copy of a well log, other than a
15 department copy, shall include the name, mailing address, and
16 telephone number of the Board and the department. The well log
17 required herein shall at the request in writing to the department
18 [Commission], by certified mail, by the owner or the person having
19 such well drilled be held as confidential matter and not made of
20 public record.

21 Section 6. WATER WELL DRILLERS BOARD. (a) The Water Well
22 Drillers Board shall be composed of nine (9) members appointed by
23 the governor with the advice and consent of the Senate, three--ex
24 officio--and six appointed as follows, to-wit: Appointments to the
25 Board shall be made without regard to the race, creed, sex, religion,
26 or national origin of the appointees.

27 [(a)--One--(1)--member--of--the--Board--shall--be--the--chairman--of

1 the--Texas--Water--Commission--or--a--representative-from-his-staff
2 appointed-by-him-who-shall-be-a-novoting-member-and-shall-serve-in
3 an-advisory-capacity-only.--In-the-event-that-the-functions-of--the
4 Texas---Water---Commission--are--transferred--to--the--Texas--Water
5 Development-Board,--then-the-member-appointed-hereby--shall--be--the
6 Executive--Director--of--the--Texas--Water--Development--Board-or-a
7 representative-from-his-staff-appointed-by-him.

8 \[(b) --One-(1)-member-shall-be-the-Executive-Secretary-of--the
9 State--Water--Pollution--Control-Board-or-a-representative-from-his
10 staff-appointed-by-him-and-shall-also-be--a--novoting--member--and
11 shall-serve-in-advisory-capacity-only-

12 \[(c) --One-(1)-member-shall-be-the-chairman-of-the-State-Board
13 of--Health--or-a-representative-from-his-staff-appointed-by-him-and
14 shall-also-be-a-novoting-member-and-shall--serve--in--an--advisory
15 capacity-only:]

16 \[(b) [(d)] Six (6) members shall be water well drillers who
17 have [appointed-by-the-Governor-with-the-advice-and-consent-of--the
18 Senate,--under] the following qualifications [conditions,--to-wit]:

19 \[(1) Each such driller shall be a citizen of the State of
20 Texas.

21 \[(2) Each such driller shall have [a-minimum-of-ten-years-]
22 experience in the water well drilling business prior, to his
23 appointment.

24 \[(3) Each such driller shall be conversant in water well
25 drilling, completion and plugging methods and techniques. ^{8/9}

26 \[(4) Each such driller shall be a licensed [registered] water
27 well driller.

(5) One driller shall be selected from the State at large and one of each such drillers shall be selected from the following geographic areas of the State of Texas:

"A. Gulf Coast Area.

"B. Trans-Pecos Area.

"C. Central Texas Area.

"D. North-East Texas Area.

"E. Panhandle-South Plains Area.

"(6) [(e)] It is further provided that no more than one (1) driller [Beard] member may be employed by or own an interest in the same company, firm or business association which is engaged in any phase of the water well drilling business.

"[(f)]--The--first-six-(6)-Board-members-shall-be-appointed-for the-following-terms---two-(2)-for-two-(2)-years,-two-(2)--for--four (4)-years,-and-two-(2)-for-six-(6)-years-]

"(c) ~~Three~~ members must be representatives of the general public. A person is not eligible for appointment as a public member if the person or the person's spouse:

"(1) is licensed by an occupational regulatory agency in the field of water well drilling; or

"(2) is employed by, participates in the management of, or has, other than as a consumer, a financial interest in, a business entity or other organization related to the field of water well drilling.

"(d) A Board member or an employee of the Board or the department connected with the administration of this Act may not be an officer, employee, or paid consultant of a trade association in

1 the water well drilling industry and may not be related within the
2 second degree by affinity or consanguinity to a person who is an
3 officer, employee, or paid consultant of a trade association in the
4 regulated industry.

5 “(e) A person who, because of his activities on behalf of a
6 trade or professional association in the regulated profession, is
7 required to register as a lobbyist under Chapter 422, Acts of the
8 63rd Legislature, Regular Session, 1973, as amended (Article
9 6252-9c, Vernon's Texas Civil Statutes), may not serve as a member
10 of the Board or act as the general counsel to the Board.

11 “(f) It is a ground for removal from the Board if a member:

12 “(1) does not have at the time of appointment the
13 qualifications required by Subsection (b) or (c) of this section
14 for appointment to the Board;

15 “(2) does not maintain during his service on the Board the
16 qualifications required by Subsection (b) or (c) of this section
17 for appointment to the Board;

18 “(3) violates a prohibition prescribed by Subsection (d) or
19 (e) of this section; or

20 “(4) fails to attend at least one-half of the regularly
21 scheduled meetings held each year, excluding meetings held when the
22 person was not a Board member.

23 “(g) All terms shall expire on September 15 and all regular
24 appointments shall be for terms of six (6) years.

25 “(h) --The--initial--appointments--of--the--six--(6)--members--shall
26 be--made--immediately--following--the--effective--date--of--this--Act.

27 “(i) --The--six--(6)--appointed--Board--members--shall--receive

~~compensation-and-travel-allowance-as-the-Legislature-may-provide-in
the-General-Appropriation-Act.]~~

\\ (h) Each member of the Board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the general appropriations act.

\\ (i) ~~[(+)]~~ The Board shall hold meetings ~~[a-regular-annual-meeting; it may hold-special-meetings]~~ at the call of the chairman ~~[or-at-the-request-of-three-Board-members]~~. Meetings shall be conducted in compliance with Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes).

\\ (j) ~~[(+)]~~ A majority of the Board is a quorum for conducting business.

\\ (k) ~~[(+)]~~ The Board shall elect a chairman ~~[---who---shall---be presiding---officer,---and-who-shall-not-vote-except-when-there-shall-be-a-tie-vote;]~~ by a majority vote at the first ~~[regular]~~ meeting each year.

↗
The board may recognize, prepare, or carry out continuing education programs for its licensees.

Participation in the programs is voluntary.

\\ (l) ~~[(+)]~~ The Board shall prepare ~~[and-grade]~~ examinations and pass upon qualifications of applicants for licenses and cause to be issued licenses to those who qualify.

\\ (m) ~~[(+)]~~ The Board shall design written examinations in such a manner as to disqualify any person lacking in the necessary knowledge of drilling, completion and plugging methods and techniques and of ground water formations to the extent that the performance by such person of services as a water well driller would create a serious risk of polluting fresh water. Provided,

1 however, that each applicant shall have the right to have such
2 examination given him orally, in lieu of in writing.

3 ~~"(e)--A-person-who-passes-the-examination-given-by-the--Board~~
4 ~~is-entitled-to-be-licensed-under-this-Act-]~~

5 ~~"(n) [(p)]~~ Administration of examination:

6 ~~"(1)~~ The department [Commission] shall offer examinations
7 prepared by the Board at least once a year and more frequently if
8 more than 10 persons petition the Board [Commission] for an
9 additional examination, or the Board should so provide.

10 ~~"(2)~~ The examination shall be so administered so that the one
11 who grades an examination does not know whose paper he is grading.

12 ~~"(3)~~ The department [Commission] shall maintain files of
13 examination papers. Not later than the 30th day after the date a
14 licensing examination is administered under this Act, the
15 department shall notify each examinee of the results of the
16 examination. A person, at any time within six months of the date
17 that he is notified of the results of an examination, is entitled
18 to inspect his examination paper during normal business hours at
19 the department's offices [Commission's-office] for the purpose of
20 challenging the propriety of the questions, the method of grading,
21 and the accuracy of grading. If requested in writing by a person
22 who fails the licensing examination administered under this Act,
23 the department shall furnish the person with an analysis of the
24 person's performance on the examination.

25 ~~"[(4)--All--successful-applicants-who-pass-the-examination-may~~
26 ~~pay-the-\$25.00-registration-fee-to--the--Commission--and--obtain--a~~
27 ~~drillers-registration-certificate-]~~

1 \(\circ\) [†g] The person who fails an examination may apply for
2 a subsequent examination, but must pay the examination
3 [application] fee each time he applies. [He-may-not,-however,-be
4 counted-among-the-ten-(10)-applicants-necessary-to-petition-for--an
5 additional-examination-]

6 "Sec^{ion} 6a. APPLICATION OF SUNSET ACT. The Texas Water Well
7 Drillers Board is subject to the Texas Sunset Act, as amended
8 (Article 5429k, Vernon's Texas Civil Statutes). Unless[,-and
9 unless] continued in existence as provided by that Act, the board
10 is abolished, and this Act expires effective September 1, 1993
11 [1981].

12 "Sec^{ion} 7. RULES AND REGULATIONS. (a) The Board shall adopt,
13 prescribe, promulgate, and enforce all rules and regulations
14 reasonably necessary to effectuate the provisions of this Act,
15 including all rules governing applications for a license
16 [registration-certificates], qualifications of applicants, marking
17 of water well drilling rigs and equipment, standards of conduct for
18 licensed [registered] water well drillers and all rules governing
19 procedure and practice before the Board. Be it further provided,^{13/4}
20 however, that before the Board may adopt any substantive rule under
21 this Act, it must mail a copy of the proposed rule or amendment
22 together with an informative summary of the rule or amendment to
23 each person licensed under this Act, at least twenty (20) days
24 prior to the proposed adoption [effective] date of such a proposed
25 rule. [The--procedural--rules-adopted-by-the-Board-shall-be-filed
26 with-the-Secretary-of-State-and-shall-become-effective-thirty--(30)-
27 days-thereafter-]

1 "(b) Full authority is given the Board to enforce by
2 injunction or other appropriate remedy, in courts of competent
3 jurisdiction, any and all reasonable rules, regulations, decisions,
4 determinations and orders promulgated by it which do not conflict
5 with any law. It shall be the duty of the Attorney General to
6 represent the Board when requested to do so.

7 "(c) The Board shall propose and adopt all rules in
8 accordance with the Administrative Procedure and Texas Register
9 Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

10 ~~[All rules and regulations proposed to be adopted and promulgated~~
11 ~~by the Board shall be approved in writing by the Attorney General~~
12 ~~and placed on file in the office of the Secretary of State for~~
13 ~~public inspection for at least thirty (30) days prior to their~~
14 ~~effective date. Any changes, alterations or revocations of such~~
15 ~~rules and regulations shall be likewise approved in writing by the~~
16 ~~Attorney General and which changes, alterations or revocations~~
17 ~~shall be filed in the office of Secretary of State prior to their~~
18 ~~effective date.]~~

19 "^{now}Sec 8. REVOCATION OF LICENSES [CERTIFICATES ~~OF~~
20 REGISTRATION]. (a) The Board shall revoke or suspend a license,
21 place on probation a person whose license has been suspended, or
22 reprimand a licensee for a violation of this Act or a rule adopted
23 by the Board under this Act [~~certificate of registration of any~~
24 ~~registered water well driller who violates any provision of this~~
25 ~~Act or any substantive rule or regulation of the Board promulgated~~
26 ~~under the authority of this Act may be revoked or suspended by the~~
27 ~~Board]. Grounds for revocation, [or] suspension, probation, or~~

1 reprimand [~~ef-a-driller's-certificate~~] shall include intentional
2 misstatement or misrepresentation of fact on an application or well
3 log; failure to keep and transmit water well logs as provided
4 herein; failure to advise a person for whom a well is being drilled
5 that injurious water has been encountered, is a pollution hazard,
6 and must be forthwith plugged in an acceptable manner; or being
7 found to be an incompetent water well driller.

8 \ (b) The Board shall, before suspending or revoking any
9 license [~~certificate---of--registration~~], placing a person on
10 probation, or reprimanding a licensee, notify the holder in writing
11 of any charges [~~changes~~] made in order to afford such holder an
12 opportunity to be heard, which notification shall be given at least
13 ten (10) days prior to the date set for hearing, and which shall
14 prescribe the time and place of the hearing. Such written notice
15 may be served by mailing same by registered mail to the last known
16 business address of such person. At such hearing such person and
17 all persons complaining against him, as well as any other witness
18 whose testimony is relied upon to substantiate the charges made,
19 shall be entitled to be present. He shall also be entitled to
20 present evidence, oral and written as may be relevant to the
21 inquiry. In such hearing all witnesses shall be duly sworn and a
22 record of the proceedings shall be taken. Any party to the
23 proceedings desiring it shall be furnished with a copy of the
24 record upon the payment to the Board of a fee not to exceed fifty
25 cents (50¢) per page.

26 \ (c) Every decision and order in a disciplinary [~~revocation~~
27 ~~or-suspension~~] hearing rendered by the Board shall be in writing

1 and shall set forth briefly the findings of fact and Board's
2 conclusions. Parties to the proceedings shall be notified of the
3 decision or order in person or by mail and forwarded a copy of
4 same; such orders or decisions shall be transmitted no later than
5 thirty (30) days of conclusion of the hearing.

6 "Section 9. APPEAL OF BOARD ACTION. (a) A person affected by
7 any ruling, order, decision, or other act of the Board may appeal
8 by filing a petition in a District Court in the county in which the
9 alleged violation occurred.

10 "(b) Petition must be filed within thirty (30) days after the
11 date of the Board's action, or, in case of a ruling, order, or
12 decision, within thirty (30) days after its effective date.

13 "(c) Service of citation on the Board must be accomplished
14 within thirty (30) days after the date the petition was filed.
15 Citation may be served on the Executive Director of the department
16 [Water--Development--Board] or on any member of the Water Well
17 Drillers Board.

18 "(d) The plaintiff shall pursue his action with reasonable
19 diligence. 12/7

20 "(e) The substantial evidence rule applies in the judicial
21 review of any Board action, ruling, order, or decision [Any--ruling
22 ~~of-the-Board-may-be-appealed-in-the-same-manner-as-appeals-from-the~~
23 ~~justice---court--to--the--county--court~~]. All administrative or
24 executive action taken prior to the filing of the suit shall
25 continue in force and effect until the rights of the parties
26 thereto shall be determined by the court upon a trial of the
27 matters in controversy.

1 ^{how} Sect 10. DUTIES OF THE DEPARTMENT [COMMISSION]. (a) The
2 department [Commission] shall furnish the Board with necessary
3 clerical [administrative] services, including space for holding
4 examinations; [~~preparing--examinations;~~] printing examinations;
5 printing and mailing licenses; sending notices[~~;-before-August-1-of~~
6 ~~each--year--that--license--must--be--renewed~~]; collecting fees and
7 issuing receipts; [~~keeping--a--current--register--of--licensees;~~] ⁷²
8 employing secretarial assistance; replying to routine requests for
9 information; printing forms and information; typing all letters to
10 be reproduced; maintaining records and completed examinations; and
11 keeping records of receipts and disbursements; providing necessary
12 legal services; and providing necessary investigative services, and
13 the department [Commission] shall promulgate procedures and
14 standards for plugging water wells [~~under-Section-15-of-this--Act~~].

15 “(b) The Board shall have access to information kept by the
16 department [Commission] under this Act.

17 “(c) The department [Commission] shall adopt the necessary
18 procedural rules in order to carry out the imposed duties under
19 this Section of this Act. ^{1/15}

20 “(d) The department shall prepare information of consumer
21 interest describing the regulatory functions of the Board and the
22 Board's procedures by which consumer complaints are filed with and
23 resolved by the Board. The department shall make the information
24 available to the general public and appropriate state agencies.

25 [Full-authority-is-given-the-Commission-to-enforce-by-injunction-or
26 other--appropriate-remedy,-in-courts-of-competent-jurisdiction,-any
27 and-all-rules,-regulations,-decisions,-determinations--and--orders

promulgated-by-it-which-do-not-conflict-with-any-law-}

"(e) If a written complaint is filed with the Board relating to a licensee, the department, at least as frequently as quarterly, shall notify the parties to the complaint of the status of the complaint until final disposition unless the notice would jeopardize an undercover investigation. The department shall maintain an information file about each complaint filed with the Board relating to a licensee.

"[Section 11. --EXCEPTION--OF--DROUGHT--DISASTER--AREAS--] Upon petition--of-the-commissioners-court-of-any-county-the-Governor-may proclaim-the-county-a--drought--disaster--area--if--the--Governor issues-the-proclamation-that-the-county-is-a-drought-disaster-area, the-terms-and-provisions-of-this-Act-are-suspended-in-such-a-county for--the--length--of--time--specified--in--the-proclamation,--except insofar-as-said-Act-applies-to-the-plugging-of-water-wells-]

"Section 11 [12]. DISPOSITION OF REVENUES. (a) The state auditor shall audit the financial transactions of the Board and department in connection with the administration of this Act during each fiscal biennium. 18/9

"(b) All money collected by the department [Commission] under the provisions of this Act shall be deposited in the state treasury to the credit of a special fund to be known as the water well drillers fund and may be used only to administer this Act [placed in-the-General-Revenue-Fund].

"(c) On or before January 1 of each year, the department shall submit in writing to the governor and the presiding officer of each house of the legislature a complete and detailed report

1 accounting for funds received and disbursed under this Act by the
2 department and the Board during the preceding year.

3 ^{now} Section 12 [13]. CIVIL PENALTY. Any person who fails to comply
4 with the provisions of this Act, or with any rule or regulation
5 promulgated by the board or the department [~~commission~~] under this
6 Act, [~~or-with-any-term,-condition-or-provision-in-his-permit-issued~~
7 ~~pursuant-to-this-Act,~~] shall be subject to a civil penalty in any
8 sum not exceeding One Thousand Dollars (\$1,000) for each day of
9 noncompliance and for each act of noncompliance, as the court may
10 deem proper. A firm, partnership, association, corporation, or
11 other group or combination with which the person was connected in
12 relation to the act of noncompliance is also subject to the civil
13 penalty. The action may be brought by the board [~~or--the~~
14 ~~commission,-as-appropriate,~~] in any court of competent jurisdiction
15 in the county where the offending activity is occurring or where
16 the defendant resides. Full authority is also given the executive
17 director [~~board--or--commission,-as-appropriate,~~] to enforce by
18 injunction, mandatory injunction or other appropriate remedy, in
19 courts having jurisdiction in the ¹⁹/₆ county where the offending
20 activity is occurring, [~~any--and--all---reasonable---rules---and~~
21 ~~regulations--promulgated--by-it-which-do-not-conflict-with-any-law,~~
22 ~~and-all-of-the-terms,-conditions-and-provisions-of--permits--issued~~
23 ~~by-the-board-or-commission-pursuant-to~~] the provisions of this Act.
24 At the request of the board or the executive director [~~commission~~],
25 the Attorney General shall institute and conduct a suit in the name
26 of the State of Texas for injunctive relief or to recover the civil
27 penalty, or for both the injunctive relief and civil penalty,

1 authorized in this section. Any party to a suit may appeal from a
2 final judgment as in other civil cases. The obtaining of a license
3 [~~permit~~] under the provisions of this Act by a person shall not act
4 to relieve that person from liability under any statutory law or
5 the Common Law.

6 "¹⁹Sec¹⁸ 13 [~~14~~]. MARKING RIGS WITH IDENTIFICATION NUMBER. It
7 is the duty of all licensed [~~registered~~] water well drillers to see
8 that all rigs used by them or their employees in the water well
9 drilling business are marked with legible identification numbers at
10 all times; the 'identification number' to be used on the rigs shall
11 be the 'license number' which appears on the driller's license
12 [~~registration--certificate~~]; the Board shall set out in detail in
13 its rules the specific method and manner for marking the rigs.
14 [~~The--driller--shall--furnish--a--sworn--statement--that--he--has--complied~~
15 ~~with--this--provision--of--the--Act--with--his--annual--renewal--fee--each~~
16 ~~year.~~] Any licensed driller has ^{thirty}~~(30)~~ [~~one-hundred-eighty-(180)~~] days
17 to comply with the regulations provided in this section [~~Section~~
18 ~~14~~].

19 "¹⁸Sec¹⁷ 14 [~~15~~]. PLUGGING OF WATER WELLS. (a) It shall be ^{the}~~be~~ the
20 duty of each driller licensed [~~registered~~] under this Act to inform
21 forthwith the landowner or person having a well drilled when water
22 [~~is~~] injurious to vegetation, to land or to fresh water has been
23 encountered and such well must be plugged or properly completed in
24 order to avoid injury or pollution.

25 " (b) It shall be the duty of the driller [~~landowner-or-person~~
26 ~~having--a--well--drilled--upon--being--so--informed,~~] to see that such a
27 well is forthwith plugged or completed under standards and

1 procedures promulgated [set] by the department [Texas--Water
2 Commission].

3 “(c) It shall be the duty of whoever shall plug such a well
4 to complete a plugging report within thirty (30) days and submit it
5 to the executive director [Commission]; appropriate forms shall be
6 furnished by the executive director [Commission] upon request.

7 “Sec^m 15 [17]. CONSTRUCTION. Nothing in this Act shall be
8 construed as affecting the ownership, or the rights of owners of
9 the land, in underground water.

10 “Sec^m 16 [18]. SEVERABILITY CLAUSE. If any provision of this
11 Act or the application thereof to any person or circumstance is
12 held invalid, such invalidity shall not affect other provisions or
13 applications of the Act which can be given effect without defeating
14 the purpose or objective of the provision, and to this end, the
15 provisions of this Act are declared to be severable.

16 “Sec^m 17 [20]. TRANSFER OF FUNCTIONS. In the event that the
17 functions of the Texas Department of Water Resources [Water
18 Commission] necessary to the proper implementation of its duties
19 under this Act are transferred to [the--Texas--Water--Development
20 Board--er] any other agency, the authority given herein to the Texas
21 Department of Water Resources [Water--Commission] shall be
22 transferred to [the-Texas-Water-Development-Board--er] such other
23 agency.”

24 SECTION 2. Each valid certificate of registration issued by
25 the board on or before September 1, 1981, continues in effect until
26 its regular expiration date.

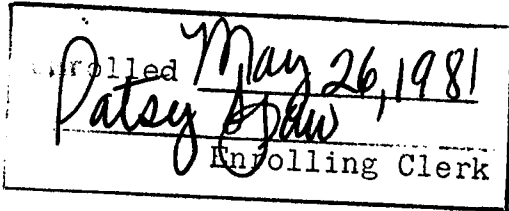
27 SECTION 3. (a) Except for the ex officio members, incumbent

1 members of the board on the effective date of this Act serve the
2 remainder of their terms.

3 (b) The governor shall appoint one public member for a term
4 expiring on September 15, 1983, one public member for a term
5 expiring on September 15, 1985, and one public member for a term
6 expiring on September 15, 1987.

7 SECTION 4. This Act takes effect September 1, 1981.

8 SECTION 5. The importance of this legislation and the
9 crowded condition of the calendars in both houses create an
10 emergency and an imperative public necessity that the
11 constitutional rule requiring bills to be read on three several
12 days in each house be suspended, and this rule is hereby suspended.



S.B. No. 915

AN ACT

relating to continuation of the functions of the Texas Water Well Drillers Board and regulation of water well drillers; amending the Water Well Drillers Act, as amended (Article 7621e, Vernon's Texas Civil Statutes).

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Water Well Drillers Act, as amended (Article 7621e, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 1. SHORT TITLE. This Act shall be known and may be cited as 'The Water Well Drillers Act.'

"Section 2. DEFINITIONS. The following words and phrases as used in this Act shall have the following meanings unless a different meaning clearly appears from the context. The singular form shall also mean plural form and the masculine gender shall also include the feminine and neuter genders.

"(a) 'Person' shall mean any individual, whether or not connected with a firm, partnership, association, corporation, or any other group or combination acting as a unit.

"[(b) -- 'Commission' -- shall mean the Texas Water Commission -- or its successor.]

"(b) [(e)] 'Board' shall mean the Texas Water Well Drillers Board.

"(c) 'Executive director' shall mean the executive director of the Texas Department of Water Resources.

"(d) 'Department' shall mean the Texas Department of Water

1 Resources.

2 "(e) [(d)] 'Water well' shall mean any artificial excavation
3 constructed for the purpose of exploring for or producing ground
4 water. The term, however, shall not include any test or blast
5 holes in quarries or mines, or any well or excavation for the
6 purpose of exploring for, or producing oil, gas, or any other
7 minerals unless the holes are used to produce ground water.

8 "(f) [(e)] 'Water well driller' shall mean any person
9 (including owner, operator, and drilling supervisor) who engages
10 for compensation in the drilling, boring, coring, or construction
11 of any water well in this State. The term, however, shall not
12 include any person who drills, bores, cores, or constructs a water
13 well on his own property for his own use or a person who assists in
14 the construction of a water well under the direct supervision of a
15 licensed [registered] water well driller and is not primarily
16 responsible for the drilling operations.

17 "(g) [(f)] 'Licensed [Registered] water well driller' shall
18 mean any person who holds a license [certificate] issued by the
19 State of Texas pursuant to the provisions of this Act.

20 "(h) [(g)] 'Pollution' shall mean the changing of the
21 physical, thermal, chemical, or biological quality of, or the
22 contamination of, any water in a way that makes the water harmful
23 to humans, animal life, vegetation, or property or to the public
24 health, safety, or welfare or that impairs the usefulness or the
25 public enjoyment of the water for any lawful or reasonable purpose
26 [an--impairment-of-the-physical,-chemical,-or-biological-properties
27 of-water-by-the-acts-or-instrumentalities-of-man-to-a-degree--which

results--in--a--material--and--adverse--effect--upon--the--quality--as--to
destroy--possible--consumptive--or--beneficial--use--of--such--waters].

"(i) [(h)] 'Well log' shall mean a log accurately kept, at
the time of drilling, showing the depth, thickness, character of
the different strata penetrated, location of water-bearing strata,
depth, size and character of casing installed, together with any
other data or information required by the Board, on forms
prescribed by the Board.

"(j) [(i)] 'Water Well Drillers Board' shall mean an
examining board consisting of nine (9) members, all [three--of--whom
shall--be--ex--officio--nonvoting--members--and--six] of whom shall be
voting members appointed by the Governor with the advice and
consent of the Senate as hereinafter provided.

"(k) [(j)] 'License [Registration] fee' shall mean the
initial fee to be paid by a driller under this Act [which--shall--be,
unless--otherwise--provided--herein,--\$25.00].

"(l) [(k)] 'Renewal fee' shall mean that fee paid by a
previously licensed [registered] driller [which--shall--be--\$25.00--per
annum].

"(m) [(l)] 'Examination fee' shall mean that [\$10.00]
non-refundable fee required of each applicant for each examination.

"Section 3. LICENSE [REGISTRATION] REQUIRED. (a) It shall
be unlawful for any person to act as or to offer to perform
services as a water well driller without first obtaining a license
[certificate--of--registration] in the manner prescribed herein and
pursuant to the rules of the Water Well Drillers Board.

"(b) Applications shall contain the name of the applicant,

his business address, his permanent mailing address, and such other relevant information as the Board may require.

"(c) At the time of making application, each applicant shall pay to the department [~~Commission~~] the required examination fee which shall be non-refundable; and the successful candidates upon notification of eligibility shall pay to the department [~~Commission~~] the license [~~registration~~] fee.

"(d) All licenses [~~certificates--of--registration~~] issued under this Act shall expire on August 31 of each year; and on or before that day, each person holding a license [~~certificate--of--registration~~] shall pay to the department [~~Commission--the--sum--of--\$25.00--as~~] an annual renewal fee. [~~Provided--further,--however,--any--driller--who--allows--his--license--to--lapse--shall--be--given--a--one--year--grace--period--in--which--to--renew--his--certificate--by--paying--the--accrued--renewal--fee,--without--the--need--of--taking--the--drillers--examination.~~] The department shall notify each licensee in writing of the licensee's impending license expiration at least 30 days before the expiration and shall attempt to obtain from each licensee a signed statement confirming receipt of the notice. A person may renew his unexpired license by paying to the department before the expiration date of the license the required renewal fee. If a person's license has been expired for 90 days or less, the person may renew the license by paying to the department the required renewal fee and a fee that is one-half of the examination fee for the license. If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the department all unpaid renewal fees and a

fee that is equal to the examination fee for the license. If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

"(e) The department shall maintain a current register of licensees.

"(f) [(e)] A license [certificate-of-registration] shall not be transferable or assignable.

"(g) [(f)] A duplicate license [certificate-of-registration] to replace a lost or destroyed license [certificate] shall be issued by the department [Commission] upon proper application and payment of a [\$1-00] fee.

"[(g)--Any-water-well-driller-in-this-State-on-the--effective date-of-this-Act-shall-be-entitled-to-a-certificate-of-registration upon--the--filing--of-an-application-no-later-than-August-31,-1966, and-the-payment-of-a-\$25-00-registration-or-renewal-fee.]

"(h) The Board shall establish for the administration of this Act reasonable and necessary fees not exceeding the following amounts:

"1. Examination	\$ 25
"2. License	100
"3. Renewal	100
"4. Duplicate License	10

"(i) The Board shall not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement.

"(j) [(h)] Each applicant shall have been a resident of the

1 State of Texas for not less than 90 days prior to making
2 application for a license [registration] as a water well driller.

3 "Section 3A. LICENSES. The board by rule may adopt a system
4 under which licenses [certificates--of--registration] expire on
5 various dates during the year. For the year in which the license
6 [certification] expiration date is changed, license [certificate]
7 renewal fees payable on August 31 shall be prorated on a monthly
8 basis so that each license [certificate] holder shall pay only that
9 portion of the license [certification] renewal fee which is
10 allocable to the number of months during which the license
11 [certification] is valid. On renewal of the license
12 [certification] on the new expiration date, the total license
13 [certification] renewal fee is payable.

14 "Section 4. ENDORSEMENT [RECIPROCITY]. The Board may
15 develop rules specifying grounds by which the department may waive
16 any license requirement for an applicant with a valid license from
17 another state having license requirements substantially equivalent
18 to those of this state [The-Commission, upon application--therefor
19 and--upon--the--payment-of-the-proper-registration-fee, may issue a
20 certificate-of-registration-as-a-registered-water-well-driller--to
21 any-person-who-holds-a-certificate-of-qualification-or-registration
22 issued--to--him--by--proper--authority-in-any-state-or-territory-or
23 possession-of-the-United-States, or-of-any-other--country,--if--the
24 registration-standard-under-which-said-certificate-was-issued-is-of
25 a--standard-not-lower-than-that-specified-by-the-provisions-of-this
26 Act, and-the-rules-of-the-Water--Well--Drillers--Board--promulgated
27 pursuant--to--the--provisions-hereof, and-if-that-particular-state,

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territory, or possession of the United States, or country extends similar privileges to the persons registered under the provisions of this Act, provided, however, that before such applicant may be registered, he must show compliance with the residency requirements of Section 3, subsection (h) hereof. The Board shall keep the Commission informed of what states, territories, possessions, and countries fulfill these reciprocal requirements].

"Section 5. REPORTING OF WELL LOGS. Every licensed [registered] water well driller drilling, deepening or otherwise altering a water well within this State shall make and keep, or cause to be made and kept, a legible and accurate well log, and within 30 [sixty--(60)] days from the completion or cessation of drilling, deepening or otherwise altering such a water well, shall deliver or transmit by certified mail a copy of such well log to the department [Commission], and the owner thereof or the person having had such well drilled. Each copy of a well log, other than a department copy, shall include the name, mailing address, and telephone number of the Board and the department. The well log required herein shall at the request in writing to the department [Commission], by certified mail, by the owner or the person having such well drilled be held as confidential matter and not made of public record.

"Section 6. WATER WELL DRILLERS BOARD. (a) The Water Well Drillers Board shall be composed of nine (9) members appointed by the governor with the advice and consent of the senate. Appointments to the Board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. [7

three-ex-officio-and-six-appointed-as-follows,-to-wit-

"[(a) -- One -- (1) -- member-of-the-Board-shall-be-the-chairman-of the-Texas-Water-Commission--or--a--representative--from--his--staff appointed-by-him-who-shall-be-a-nonvoting-member-and-shall-serve-in an--advisory-capacity-only. --In-the-event-that-the-functions-of-the Texas--Water--Commission--are--transferred--to--the---Texas---Water Development--Board,--then--the-member-appointed-hereby-shall-be-the Executive-Direector-of--the--Texas--Water--Development--Board--or--a representative-from-his-staff-appointed-by-him-

"[(b) -- One -- (1) -- member-shall-be-the-Executive-Secretary-of-the State--Water--Pollution--Control-Board-or-a-representative-from-his staff-appointed-by-him-and-shall-also-be--a--nonvoting--member--and shall-serve-in-advisory-capacity-only-

"[(c) -- One -- (1) -- member--shall--be--the-chairman-of-the-State Board-of-Health-or-a-representative-from-his-staff-appointed-by-him and-shall-also-be-a-nonvoting-member-and-shall-serve-in-an-advisory capacity-only-]

"(b) [(d)] Six (6) members shall be water well drillers who have [appointed-by-the-Governor-with-the-advice-and-consent-of-the Senate,-under] the following qualifications [conditions,-to-wit]:

"(1) Each such driller shall be a citizen of the State of Texas.

"(2) Each such driller shall have [a-minimum-of-ten--years'] experience in the water well drilling business prior to his appointment.

"(3) Each such driller shall be conversant in water well drilling, completion and plugging methods and techniques.

"(4) Each such driller shall be a licensed [~~registered~~] water well driller.

"(5) One driller shall be selected from the State at large and one of each such drillers shall be selected from the following geographic areas of the State of Texas:

"A. Gulf Coast Area.

"B. Trans-Pecos Area.

"C. Central Texas Area.

"D. North-East Texas Area.

"E. Panhandle-South Plains Area.

"(6) [~~e~~] It is further provided that no more than one (1) driller [~~Board~~] member may be employed by or own an interest in the same company, firm or business association which is engaged in any phase of the water well drilling business.

~~"[~~f~~]-The-first-six-(6)-Board-members-shall-be-appointed-for the-following-terms---two-(2)-for-two-(2)-years,-two-(2)-for--four (4)-years,-and-two-(2)-for-six-(6)-years.]~~

"(c) Three members must be representatives of the general public. A person is not eligible for appointment as a public member if the person or the person's spouse:

"(1) is licensed by an occupational regulatory agency in the field of water well drilling; or

"(2) is employed by, participates in the management of, or has, other than as a consumer, a financial interest in, a business entity or other organization related to the field of water well drilling.

"(d) A Board member or an employee of the Board or the

1 department connected with the administration of this Act may not be
 2 an officer, employee, or paid consultant of a trade association in
 3 the water well drilling industry and may not be related within the
 4 second degree by affinity or consanguinity to a person who is an
 5 officer, employee, or paid consultant of a trade association in the
 6 regulated industry.

7 "(e) A person who, because of his activities on behalf of a
 8 trade or professional association in the regulated profession, is
 9 required to register as a lobbyist under Chapter 422, Acts of the
 10 63rd Legislature, Regular Session, 1973, as amended (Article
 11 6252-9c, Vernon's Texas Civil Statutes), may not serve as a member
 12 of the Board or act as the general counsel to the Board.

13 "(f) It is a ground for removal from the Board if a member:

14 "(1) does not have at the time of appointment the
 15 qualifications required by Subsection (b) or (c) of this section
 16 for appointment to the Board;

17 "(2) does not maintain during his service on the Board the
 18 qualifications required by Subsection (b) or (c) of this section
 19 for appointment to the Board;

20 "(3) violates a prohibition prescribed by Subsection (d) or
 21 (e) of this section; or

22 "(4) fails to attend at least one-half of the regularly
 23 scheduled meetings held each year, excluding meetings held when the
 24 person was not a Board member.

25 "(g) All terms shall expire on September 15 and all regular
 26 appointments shall be for terms of six (6) years.

27 "[(h) --The--initial--appointments--of--the--six--(6)--members--shall

1 ~~be-made-immediately-following-the-effective-date-of-this-Act.~~

2 "~~{i}~~--The-six-(6)--appointed--Board--members--shall--receive

3 ~~compensation-and-travel-allowance-as-the-Legislature-may-provide-in~~

4 ~~the-General-Appropriation-Act.]~~

5 "(h) Each member of the Board is entitled to a per diem as

6 set by legislative appropriation for each day that the member

7 engages in the business of the Board. A member may not receive any

8 compensation for travel expenses, including expenses for meals and

9 lodging, other than transportation expenses. A member is entitled

10 to compensation for transportation expenses as prescribed by the

11 General Appropriations Act.

12 "(i) [~~{j}~~] The Board shall hold meetings [~~a--regular--annual~~

13 ~~meeting;--it-may-hold-special-meetings]~~ at the call of the chairman

14 [~~or-at-the-request-of-three--Board--members]~~. Meetings shall be

15 conducted in compliance with Chapter 271, Acts of the 60th

16 Legislature, Regular Session, 1967, as amended (Article 6252-17,

17 Vernon's Texas Civil Statutes).

18 "(j) [~~{k}~~] A majority of the Board is a quorum for

19 conducting business.

20 "(k) [~~{l}~~] The Board shall elect a chairman [~~7--who--shall--be~~

21 ~~presiding--officer;--and-who-shall-not-vote-except-when-there-shall~~

22 ~~be-a-tie-vote;]~~ by a majority vote at the first [~~regular~~] meeting

23 each year. The Board may recognize, prepare, or carry out

24 continuing education programs for its licensees. Participation in

25 the programs is voluntary.

26 "(l) [~~{m}~~] The Board shall prepare [~~and-grade~~] examinations

27 and pass upon qualifications of applicants for licenses and cause

1 to be issued licenses to those who qualify.

2 "(m) [~~{n}~~] The Board shall design written examinations in
3 such a manner as to disqualify any person lacking in the necessary
4 knowledge of drilling, completion and plugging methods and
5 techniques and of ground water formations to the extent that the
6 performance by such person of services as a water well driller
7 would create a serious risk of polluting fresh water. Provided,
8 however, that each applicant shall have the right to have such
9 examination given him orally, in lieu of in writing.

10 "~~{e}~~--A person who passes the examination given by the Board
11 is entitled to be licensed under this Act.]

12 "(n) [~~{p}~~] Administration of examination:

13 "(1) The department [~~Commission~~] shall offer examinations
14 prepared by the Board at least once a year and more frequently if
15 more than 10 persons petition the Board [~~Commission~~] for an
16 additional examination, or the Board should so provide.

17 "(2) The examination shall be so administered so that the
18 one who grades an examination does not know whose paper he is
19 grading.

20 "(3) The department [~~Commission~~] shall maintain files of
21 examination papers. Not later than the 30th day after the date a
22 licensing examination is administered under this Act, the
23 department shall notify each examinee of the results of the
24 examination. A person, at any time within six months of the date
25 that he is notified of the results of an examination, is entitled
26 to inspect his examination paper during normal business hours at
27 the department's offices [~~Commission's office~~] for the purpose of

1 challenging the propriety of the questions, the method of grading,
2 and the accuracy of grading. If requested in writing by a person
3 who fails the licensing examination administered under this Act,
4 the department shall furnish the person with an analysis of the
5 person's performance on the examination.

6 "[~~(4)~~--All-successful-applicants-who-pass-the-examination-may

7 pay-the-\$25.00-registration-fee-to--the--Commission--and--obtain--a

8 ~~drillers-registration-certificate.~~]

9 "(o) [~~(q)~~] The person who fails an examination may apply for

10 a subsequent examination, but must pay the examination

11 [application] fee each time he applies. [~~He-may-not,--however,--be~~

12 ~~counted--among-the-ten-(10)-applicants-necessary-to-petition-for-an~~

13 ~~additional-examination.~~]

14 "Section 6a. APPLICATION OF SUNSET ACT. The Texas Water

15 Well Drillers Board is subject to the Texas Sunset Act, as amended

16 (Article 5429k, Vernon's Texas Civil Statutes). Unless[~~7--and~~

17 ~~unless~~] continued in existence as provided by that Act, the board

18 is abolished, and this Act expires effective September 1, 1993

19 [~~1981~~].

20 "Section 7. RULES AND REGULATIONS. (a) The Board shall

21 adopt, prescribe, promulgate, and enforce all rules and regulations

22 reasonably necessary to effectuate the provisions of this Act,

23 including all rules governing applications for a license

24 [registration-certificate], qualifications of applicants, marking

25 of water well drilling rigs and equipment, standards of conduct for

26 licensed [~~registered~~] water well drillers and all rules governing

27 procedure and practice before the Board. Be it further provided,

1 however, that before the Board may adopt any substantive rule under
 2 this Act, it must mail a copy of the proposed rule or amendment
 3 together with an informative summary of the rule or amendment to
 4 each person licensed under this Act, at least twenty (20) days
 5 prior to the proposed adoption [effective] date of such a proposed
 6 rule. [~~The--procedural--rules--adopted--by--the--Board--shall--be--filed~~
 7 ~~with--the--Secretary--of--State--and--shall--become--effective--thirty--(30)~~
 8 ~~days--thereafter.~~]

9 "(b) Full authority is given the Board to enforce by
 10 injunction or other appropriate remedy, in courts of competent
 11 jurisdiction, any and all reasonable rules, regulations, decisions,
 12 determinations and orders promulgated by it which do not conflict
 13 with any law. It shall be the duty of the Attorney General to
 14 represent the Board when requested to do so.

15 "(c) The Board shall propose and adopt all rules in
 16 accordance with the Administrative Procedure and Texas Register
 17 Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).
 18 [~~All--rules--and--regulations--proposed--to--be--adopted--and--promulgated~~
 19 ~~by--the--Board--shall--be--approved--in--writing--by--the--Attorney--General~~
 20 ~~and--placed--on--file--in--the--office--of--the--Secretary--of--State--for~~
 21 ~~public--inspection--for--at--least--thirty--(30)--days--prior--to--their~~
 22 ~~effective--date--Any--changes--alterations--or--revocations--of--such~~
 23 ~~rules--and--regulations--shall--be--likewise--approved--in--writing--by--the~~
 24 ~~Attorney--General--and--which--changes--alterations--or--revocations~~
 25 ~~shall--be--filed--in--the--office--of--Secretary--of--State--prior--to--their~~
 26 ~~effective--date.~~]

27 "Section 8. REVOCATION OF LICENSES [~~CERTIFICATES----~~OF

1 REGISTRATION]. (a) The Board shall revoke or suspend a license,
2 place on probation a person whose license has been suspended, or
3 reprimand a licensee for a violation of this Act or a rule adopted
4 by the Board under this Act [~~certificate--of--registration--of--any~~
5 ~~registered--water--well--driller--who--violates--any--provision--of--this~~
6 ~~Act--or--any--substantive--rule--or--regulation--of--the--Board--promulgated~~
7 ~~under--the--authority--of--this--Act--may--be--revoked--or--suspended--by--the~~
8 ~~Board~~]. Grounds for revocation, [~~or~~] suspension, probation, or
9 reprimand [~~of--a--driller's--certificate~~] shall include intentional
10 misstatement or misrepresentation of fact on an application or well
11 log; failure to keep and transmit water well logs as provided
12 herein; failure to advise a person for whom a well is being drilled
13 that injurious water has been encountered, is a pollution hazard,
14 and must be forthwith plugged in an acceptable manner; or being
15 found to be an incompetent water well driller.

16 "(b) The Board shall, before suspending or revoking any
17 license [~~certificate--of--registration~~], placing a person on
18 probation, or reprimanding a licensee, notify the holder in writing
19 of any charges [~~changes~~] made in order to afford such holder an
20 opportunity to be heard, which notification shall be given at least
21 ten (10) days prior to the date set for hearing, and which shall
22 prescribe the time and place of the hearing. Such written notice
23 may be served by mailing same by registered mail to the last known
24 business address of such person. At such hearing such person and
25 all persons complaining against him, as well as any other witness
26 whose testimony is relied upon to substantiate the charges made,
27 shall be entitled to be present. He shall also be entitled to

1 present evidence, oral and written as may be relevant to the
2 inquiry. In such hearing all witnesses shall be duly sworn and a
3 record of the proceedings shall be taken. Any party to the
4 proceedings desiring it shall be furnished with a copy of the
5 record upon the payment to the Board of a fee not to exceed fifty
6 cents (50¢) per page.

7 "(c) Every decision and order in a disciplinary [~~revocation~~
8 ~~or--suspension~~] hearing rendered by the Board shall be in writing
9 and shall set forth briefly the findings of fact and Board's
10 conclusions. Parties to the proceedings shall be notified of the
11 decision or order in person or by mail and forwarded a copy of
12 same; such orders or decisions shall be transmitted no later than
13 thirty (30) days of conclusion of the hearing.

14 "Section 9. APPEAL OF BOARD ACTION. (a) A person affected
15 by any ruling, order, decision, or other act of the Board may
16 appeal by filing a petition in a District Court in the county in
17 which the alleged violation occurred.

18 "(b) Petition must be filed within thirty (30) days after
19 the date of the Board's action, or, in case of a ruling, order, or
20 decision, within thirty (30) days after its effective date.

21 "(c) Service of citation on the Board must be accomplished
22 within thirty (30) days after the date the petition was filed.
23 Citation may be served on the Executive Director of the department
24 [~~Water-Development-Board~~] or on any member of the Water Well
25 Drillers Board.

26 "(d) The plaintiff shall pursue his action with reasonable
27 diligence.

1 "(e) The substantial evidence rule applies in the judicial
2 review of any Board action, ruling, order, or decision [~~Any ruling~~
3 ~~of the Board may be appealed in the same manner as appeals from the~~
4 ~~justice--court--to--the--county--court~~]. All administrative or
5 executive action taken prior to the filing of the suit shall
6 continue in force and effect until the rights of the parties
7 thereto shall be determined by the court upon a trial of the
8 matters in controversy.

9 "Section 10. DUTIES OF THE DEPARTMENT [~~COMMISSION~~]. (a)
10 The department [~~Commission~~] shall furnish the Board with necessary
11 clerical [~~administrative~~] services, including space for holding
12 examinations; [~~preparing--examinations,~~] printing examinations;
13 printing and mailing licenses; sending notices [~~7--before--August--1--of~~
14 ~~each--year--that--license--must--be--renewed~~]; collecting fees and
15 issuing receipts; [~~keeping--a--current--register--of--licensees,~~]
16 employing secretarial assistance; replying to routine requests for
17 information; printing forms and information; typing all letters to
18 be reproduced; maintaining records and completed examinations; and
19 keeping records of receipts and disbursements; providing necessary
20 legal services; and providing necessary investigative services, and
21 the department [~~Commission~~] shall promulgate procedures and
22 standards for plugging water wells [~~under--Section--15--of--this--Act~~].

23 "(b) The Board shall have access to information kept by the
24 department [~~Commission~~] under this Act.

25 "(c) The department [~~Commission~~] shall adopt the necessary
26 procedural rules in order to carry out the imposed duties under
27 this Section of this Act.

1 "(d) The department shall prepare information of consumer
 2 interest describing the regulatory functions of the Board and the
 3 Board's procedures by which consumer complaints are filed with and
 4 resolved by the Board. The department shall make the information
 5 available to the general public and appropriate state agencies.

6 "(e) If a written complaint is filed with the Board relating
 7 to a licensee, the department, at least as frequently as quarterly,
 8 shall notify the parties to the complaint of the status of the
 9 complaint until final disposition unless the notice would
 10 jeopardize an undercover investigation. The department shall
 11 maintain an information file about each complaint filed with the
 12 Board relating to a licensee. ~~[Full--authority--is--given--the~~
 13 ~~Commission-to-enforce-by-injunction-or-other-appropriate-remedy--in~~
 14 ~~courts--of--competent-jurisdiction, any and all rules, regulations,~~
 15 ~~decisions, determinations and orders promulgated by it which do not~~
 16 ~~conflict with any law.~~

17 "~~Section 11--EXCEPTION OF--DROUGHT--DISASTER--AREAS--Upon~~
 18 ~~petition--of--the--commissioners--court--of--any--county--the--Governor--may~~
 19 ~~proclaim--the--county--a--drought--disaster--area--If--the--Governor~~
 20 ~~issues--the--proclamation--that--the--county--is--a--drought--disaster--area,~~
 21 ~~the--terms--and--provisions--of--this--Act--are--suspended--in--such--a--county~~
 22 ~~for--the--length--of--time--specified--in--the--proclamation, except~~
 23 ~~insofar as said Act applies to the plugging of water wells.]~~

24 "Section 11 [12]. DISPOSITION OF REVENUES. (a) The state
 25 auditor shall audit the financial transactions of the Board and
 26 department in connection with the administration of this Act during
 27 each fiscal biennium.

1 "(b) All money collected by the department [~~Commission~~]
 2 under the provisions of this Act shall be deposited in the State
 3 Treasury to the credit of a special fund to be known as the water
 4 well drillers fund and may be used only to administer this Act
 5 [~~placed-in-the-General-Revenue-Fund~~].

6 "(c) On or before January 1 of each year, the department
 7 shall submit in writing to the governor and the presiding officer
 8 of each house of the legislature a complete and detailed report
 9 accounting for funds received and disbursed under this Act by the
 10 department and the Board during the preceding year.

11 "Section 12 [~~13~~]. CIVIL PENALTY. Any person who fails to
 12 comply with the provisions of this Act, or with any rule or
 13 regulation promulgated by the board or the department [~~commission~~]
 14 under this Act, [~~or-with-any-term,-condition-or--provision--in--his~~
 15 ~~permit--issued--pursuant--to-this-Act,~~] shall be subject to a civil
 16 penalty in any sum not exceeding One Thousand Dollars (\$1,000) for
 17 each day of noncompliance and for each act of noncompliance, as the
 18 court may deem proper. A firm, partnership, association,
 19 corporation, or other group or combination with which the person
 20 was connected in relation to the act of noncompliance is also
 21 subject to the civil penalty. The action may be brought by the
 22 board [~~or--the--commission,-as--appropriate,~~] in any court of
 23 competent jurisdiction in the county where the offending activity
 24 is occurring or where the defendant resides. Full authority is
 25 also given the executive director [~~board--or--commission,-as~~
 26 ~~appropriate,~~] to enforce by injunction, mandatory injunction or
 27 other appropriate remedy, in courts having jurisdiction in the

1 county where the offending activity is occurring, [~~any-and-all~~
 2 ~~reasonable-rules-and-regulations-promulgated-by--it--which--do--not~~
 3 ~~conflict--with--any--law,--and--all--of--the--terms,--conditions-and~~
 4 ~~provisions-of-permits-issued-by-the-board--or--commission--pursuant~~
 5 ~~to~~]the provisions of this Act. At the request of the board or the
 6 executive director [~~commission~~], the Attorney General shall
 7 institute and conduct a suit in the name of the State of Texas for
 8 injunctive relief or to recover the civil penalty, or for both the
 9 injunctive relief and civil penalty, authorized in this section.
 10 Any party to a suit may appeal from a final judgment as in other
 11 civil cases. The obtaining of a license [~~permit~~] under the
 12 provisions of this Act by a person shall not act to relieve that
 13 person from liability under any statutory law or the Common Law.

14 "Section 13 [~~14~~]. MARKING RIGS WITH IDENTIFICATION NUMBER.

15 It is the duty of all licensed [~~registered~~] water well drillers to
 16 see that all rigs used by them or their employees in the water well
 17 drilling business are marked with legible identification numbers at
 18 all times; the 'identification number' to be used on the rigs shall
 19 be the 'license number' which appears on the driller's license
 20 [~~registration-certificate~~]; the Board shall set out in detail in
 21 its rules the specific method and manner for marking the rigs.
 22 [~~The-driller-shall-furnish-a-sworn-statement-that-he--has--complied~~
 23 ~~with--this--provision--of--the-Act-with-his-annual-renewal-fee-each~~
 24 ~~year.~~] Any licensed driller has thirty (30) [~~one--hundred--eighty~~
 25 ~~(180)~~] days to comply with the regulations provided in this section
 26 [~~Section-14~~].

27 "Section 14 [~~15~~]. PLUGGING OF WATER WELLS. (a) It shall be

1 the duty of each driller licensed [~~registered~~] under this Act to
 2 inform forthwith the landowner or person having a well drilled when
 3 water [~~is~~] injurious to vegetation, to land or to fresh water has
 4 been encountered and such well must be plugged or properly
 5 completed in order to avoid injury or pollution.

6 "(b) It shall be the duty of the driller [~~landowner--or~~
 7 ~~person--having-a-well-drilled--upon-being-so-informed,~~] to see that
 8 such a well is forthwith plugged or completed under standards and
 9 procedures promulgated [~~set~~] by the department [~~Texas--Water~~
 10 ~~Commission~~].

11 "(c) It shall be the duty of whoever shall plug such a well
 12 to complete a plugging report within thirty (30) days and submit it
 13 to the executive director [~~Commission~~]; appropriate forms shall be
 14 furnished by the executive director [~~Commission~~] upon request.

15 "Section 15 [~~17~~]. CONSTRUCTION. Nothing in this Act shall
 16 be construed as affecting the ownership, or the rights of owners of
 17 the land, in underground water.

18 "Section 16 [~~18~~]. SEVERABILITY CLAUSE. If any provision of
 19 this Act or the application thereof to any person or circumstance
 20 is held invalid, such invalidity shall not affect other provisions
 21 or applications of the Act which can be given effect without
 22 defeating the purpose or objective of the provision, and to this
 23 end, the provisions of this Act are declared to be severable.

24 "Section 17 [~~20~~]. TRANSFER OF FUNCTIONS. In the event that
 25 the functions of the Texas Department of Water Resources [~~Water~~
 26 ~~Commission~~] necessary to the proper implementation of its duties
 27 under this Act are transferred to [~~the-Texas-Water-Development~~

1 ~~Board-or~~] any other agency, the authority given herein to the Texas
2 Department of Water Resources [~~Water---Commission~~] shall be
3 transferred to [~~the--Texas-Water-Development-Board-or~~] such other
4 agency."

5 SECTION 2. Each valid certificate of registration issued by
6 the board on or before September 1, 1981, continues in effect until
7 its regular expiration date.

8 SECTION 3. (a) Except for the ex officio members, incumbent
9 members of the board on the effective date of this Act serve the
10 remainder of their terms.

11 (b) The governor shall appoint one public member for a term
12 expiring on September 15, 1983, one public member for a term
13 expiring on September 15, 1985, and one public member for a term
14 expiring on September 15, 1987.

15 SECTION 4. This Act takes effect September 1, 1981.

16 SECTION 5. The importance of this legislation and the
17 crowded condition of the calendars in both houses create an
18 emergency and an imperative public necessity that the
19 constitutional rule requiring bills to be read on three several
20 days in each house be suspended, and this rule is hereby suspended.

S.B. No. 915

President of the Senate

I hereby certify that S.B. No. 915 passed the Senate on April 29, 1981, by a viva-voce vote; and that the Senate concurred in House amendment on May 26, 1981, by a viva-voce vote.

Speaker of the House

Secretary of the Senate

I hereby certify that S.B. No. 915 passed the House, with amendment, on May 23, 1981, by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor

A BILL TO BE ENTITLED
AN ACTrelating to continuation of the functions of the Texas Water Well
Drillers Board and regulation of water well drillers.3-10-81

Filed with the Secretary of the Senate

MAR 11 1981Read, referred to Committee on NATURAL RESOURCES

Reported favorably.

APR 2 1981Reported adversely, with favorable Committee Substitute; Committee Substitute
read first time.APR 29 1981

Ordered not printed.

Senate and Constitutional Rules to permit consideration suspended by
unanimous consent.
_____ years, _____ days.To permit consideration, reading and passage, Senate and Constitutional Rules
suspended by vote of _____ years, _____ days.APR 29 1981Read second time and amended ordered engrossed.APR 29 1981

Caption ordered amended to conform to body of bill.

APR 29 1981Senate and Constitutional 3-Day Rules suspended by vote of
30 years, 1 days to place bill on third reading and final passage.APR 29 1981Read third time and passed by viva-voce vote.
_____ years, _____ days.

OTHER ACTION:

Betty King
Secretary of the SenateLatsy SpawAPR 30 1981

Received from the Senate

MAY 4 1981Read first time and referred to Committee on Government5-11-81Reported favorably subs. amended, sent to Printer at 4:40 p.m.MAY 15 1981Printed and Distributed 4:13 p.m.MAY 14 1981MAY 15 1981Sent to Committee on Calendars 4:44 p.m.MAY 22 1981Read Second time subs. (amended): passed to third reading (failed)

by (Non-Record Vote) Record Vote of _____ years, _____ days

Present, not voting.Constitutional Rule requiring bills to be read on three several
days suspended (failed to suspend) by a four-fifths vote of
_____ years _____ days _____ present not voting.MAY 23 1981Read third time (amended); finally passed (failed) by a
(Non-Record Vote) Record Vote of _____ years _____ days
present not voting.MAY 23 1981

Caption ordered amended to conform to body of bill.

MAY 23 1981

Returned to Senate.

Betty Murray
Chief Clerk of the HouseMAY 23 1981

RETURNED FROM HOUSE with amendment

MAY 26 1981Senate concurred in House amend-
ments by viva voce vote.April 29, 1981 Engrossed
April 30, 1981 Sent to HOUSE

